TRANSCRIPT OF RECORD
IN SEVENTEEN VOLUMES

IN THE

Supreme Court of the United States

October Term, 1944

No. 788

HARRY BRIDGES,

Petitioners,

vs.

I. F. WIXON, as District Director, Immigration and Naturalization Service, Department of Justice,

Respondent.

VOLUME XVII

Pages 7762 to 7814

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Rotary Colorprint, 55 Eleventh Street, San Francisco.

No. 10450

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

HARRY BRIDGES,

Appellant,

vs.

I. F. WIXON, as District Director, Immigration and Naturalization Service, Department of Justice,

Appellee.

Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division

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PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Tuesday, February 8, 1944.

Before: Wilbur, Garrecht, Mathews, Stephens and Healy, Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Richard Gladstein, and Mrs. Carol King, counsel for appellant, and by Messrs. Frank J. Hennessy, United States Attorney and Edward G. Jennings, Special Assistant to the Attorney General, counsel for appellee, and submitted to the court for consideration and decision, with leave to counsel for appellant to file additional memorandum in five (5) days from date.

1767

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

HARRY BRIDGES,
Appellant,

vs.

I. F. WIXON, as District Director, Immigration and Naturalization Service, Department of Justice,
Appellee.

No. 10450

In the Matter of the Application of the COMMUNIST PARTY OF THE UNITED STATES OF AMERICA, by WILLIAM Z. FOSTER, its National Chairman, and EARL BROWDER, its General Secretary, for leave to intervene.

NOTICE OF MOTION AND MOTION FOR ORDER GRANTING LEAVE TO INTERVENE, PETITION, EXHIBIT AND PROPOSED PLEADING

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United States Circuit Court of Appeals

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HARRY BRIDGES,
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NOTICE OF MOTION AND MOTION FOR ORDER GRANTING LEAVE TO INTERVENE

To: HON. FRANCIS BIDDLE, Attorney-General of the United States; HON. TOM C. CLARK, Assistant Attorney-General of the United States; HON. FRANK J. HENNESSY, United States District Attorney; LEE PRESSMAN, Esq.; CAROL KING, Esq.; GLADSTEIN, GROSSMAN, MARGOLIS, and SAWYER, Esqs.:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that, on the 28th day of February, 1944, at ten-o'clock in the fore-

noon of that day, or as soon thereafter as counsel can be heard in the courtroom of the United States Circuit Court of Appeals for the Ninth Circuit, at the Post Office Building, Seventh and Mission Streets, San Francisco, California, the Communist Party of the United States of America will, and it hereby does, move the Court for an order granting its application to intervene in the proceeding and the appeal herein, and directing the District Court to remand the deportation proceeding to the Immigration and Naturalization Service of the Department of Justice, with directions to the said Department to give the Communist Party of the United States of America a full and fair opportunity to be heard concerning its objectives, including the right of confrontation and cross-examination and the right to present evidence, oral and documentary, in its own behalf, and such other and further relief as the Court may direct, upon the grounds that the interest of the Communist Party of the United States of America is not represented by any party to the proceeding now pending in this Court; that adequate representation of its interest requires that it be permitted to intervene; that its rights will be prejudiced if the findings and order made by the Attorney-General are sustained by a judgment of this Court; that its claim and the main proceeding herein have a question of law and fact in common; and upon all the other legal and constitutional grounds set forth in the petition annexed hereto.

Dated: February 16, 1944.

Joseph R. Brodsky, Esq.,
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UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

HARRY BRIDGES, Appellant, vs. I. F. WIXON, as District Director, Immigration and Naturalization Service, Department of Justice, Appellee.	No. 10450
In the Matter of the Application of the COMMUNIST PARTY OF THE UNITED STATES OF AMERICA, by WILLIAM Z. FOSTER, its National Chairman, and EARL BROWDER, its General Secretary, for leave to intervene.	

PETITION TO INTERVENE

To the Honorable the Judges of the Circuit Court of Appeals for the Ninth Circuit:

The petition of the Communist Party of the United States of America by William Z. Foster, its National Chairman, and Earl Browder, its General Secretary, respectfully alleges:

FIRST: The Communist Party of the United States of America, hereinafter referred to as Communist Party, is

a political party, a voluntary unincorporated association of citizens of the United States.

SECOND: William Z. Foster has been the National Chairman of the Communist Party since 1929, and Earl Browder has been its General Secretary since 1929.

THIRD: The aforesaid William Z. Foster and Earl Browder are fully familiar with the Constitution and By-Laws of the Communist Party, its organization, the proceedings of its several national conventions, the programs and platforms promulgated therein, the principles and activities of the said Communist Party from its inception to date, and are further familiar with the classic economic and political writings in the field of scientific socialism.

FOURTH: Upon information and belief, on May 28, 1942, Hon. Francis Biddle, Attorney-General of the United States, in a deportation proceeding entitled In re Harry Renton Bridges found that the Communist Party of the U. S. A., from the time of its inception in 1919 to the present time is an organization which advocates the overthrow by force and violence of the Government of the United States.

FIFTH: The findings were made by the Attorney-General without a trial or hearing, and without an opportunity being given the petitioner to present evidence, oral and documentary in its behalf.

SIXTH: The findings were made by the Attorney-General without notice to the petitioner.

SEVENTH: The findings made by the Attorney-General are unsupported by any evidence.

EIGHTH: The Attorney-General was without jurisdiction to make the findings.

NINTH: The findings made by the Attorney-General were arbitrary, capricious, and an abuse of administrative discretion, contrary to law, and the result of bias, prejudice and prejudgment.

TENTH: The findings made by the Attorney-General are unfounded and baseless in fact.

ELEVENTH: Upon information and belief, the Attorney-General on the said May 28, 1942, made an order of deportation against the said Harry Renton Bridges.

TWELFTH: Thereafter the said Harry Renton Bridges obtained from a Judge of the United States District Court for the Northern District of California an order directing the said Attorney General and others to show cause why a writ of habeas corpus should not issue, and a proceeding was had thereon and the application denied. An appeal from the order denying the said application is now pending in this Court.

THIRTEENTH: Upon information and belief, at the time of the issuance of the aforesaid order of deportation, the Attorney General at a press conference stated that he desired the courts to pass on all features of his opinion including his conclusions on the Communist Party, and that he considered the matter a test case.

FOURTEENTH: Accordingly, on August 7, 1942, the petitioner requested the Attorney General, in writing, to consent to the petitioner's intervention in the aforesaid proceeding now pending in this Court and to the entry of an order remanding the Bridges matter to the Naturalization and Immigration Service of the Department of Justice so that proper inquiry could there be made concerning the objectives of the Communist Party.

FIFTEENTH: On August 12, 1942, the Attorney General, in writing, refused the aforesaid request of the petitioner.

SIXTEENTH: The petitioner, in the proceeding herein, does not speak for the petitioner in the main proceeding, Harry Renton Bridges, whose alleged membership in the Communist Party has been repeatedly denied by the petitioner; it is concerned solely with the attempt to inflict a corollary injury upon the Communist Party.

SEVENTEENTH: The Communist Party does not and never has from the time of its inception in 1919 to the present time advocated the overthrow by force and violence of the Government of the United States.

EIGHTEENTH: The petitioner respectfully submits to this Court that its application herein is not made for any partisan reasons; is not made for the purpose of defending the Communist Party as a party of socialism; nor is the said application made for any academic reasons or merely in the interests of abstract and historic truth. The petitioner is impelled at this crucial moment in the life of our country to take issue with the allegations made by the Attorney General against the Communist Party, a party of American workers, solely for the reason that it is convinced the unfounded charges made by the Attorney General must be answered in the interest of national unity.

NINETEENTH: The techniques of dividing nations and peoples by a hue and cry against the alleged danger of Communism and Marxism was a familiar and principal weapon of Hitler and his agents in every country that he conquered.

TWENTIETH: Through the complete distortion and falsification of the tenets of Marxism and Communism; by the false assertion that those tenets included a principle or policy of forcible overthrow of the state itself or the demo-

cratic institutions of a country, Hitler and his agents divided and blinded the people in each country, weakened the vigilance of the governments against the political activities of the treacherous fifth columnists, the spies and saboteurs, and thus paved the way for national demoralization and conquest, for the fascist rule of Hitler's agents, the Quislings and Lavals.

TWENTY-FIRST: It is common knowledge that the maintenance of the false charge against the Communist Party that it advocates the forcible overthrow of our government makes it possible for the defeatist elements to use the bugbear of Communism as a cover for their disruptive and anti-war activities by denoting every anti-fascist and progressive person a "Communist".

TWENTY-SECOND: Almost without exception, those persons who are now convicted or under indictment for treasonable activities aimed at disrupting national unity are agents of Hitler who for years have employed the method of hysterical red-baiting as a means of accomplishing their unpatriotic tasks.

TWENTY-THIRD: The false statement that the Communist Party controlled a union or "manoeuvred" a strike is dangerous to the independence and integrity of our trade unions and harmful to the welfare of the nation: the Communist Party has never controlled a union nor suggested a strike; it has, prior to the war, supported strikes called by trade unions because it sought to do everything possible to aid the workers of the nation and thus to aid the nation.

TWENTY-FOURTH: Since the war effort required it, the petitioner has been among the first to urge that the trade unions refrain from exercising their right to strike while the war continued, and it has consistently opposed all strikes during this period.

TWENTY-FIFTH: The petitioner submits that were the charge against the Communist Party permitted to stand together with the charge that domination of a union by the Communist Party makes membership in that union illegal, there would be nothing to prevent the Attorney General or his successor from considering past membership of aliens in unions as a deportable offense.

TWENTY-SIXTH: The petitioner submits that it would not be difficult, by the same line of reasons and legal conclusions, to charge existing unions and their present or past alien members with being subject to deportation since reactionary forces in our country have charged and continue to charge that many unions affiliated either with the American Federation of Labor or the C.I.O. are Communist organizations.

TWENTY-SEVENTH: The finding made by the Attorney-General that the Communist Party advocates the forcible overthrow of the Government of the United States is unsupported by any evidence of a single overt act of political violence or sabotage by any member of the Communist Party from the inception of the Party to the present day.

TWENTY-EIGHTH: The petitioner respectfully submits that the Attorney-General has been unable to cite such illegal act on the part of any member of the Communist Party because the tenets of the Communist Party are opposed to and inconsistent with advocacy of force and violence.

TWENTY-NINTH: Despite the fact that the petitioner has held six national conventions in the past decade; despite the fact that its governing body, the National Committee, has met even more often; and despite the fact that both bodies have adopted resolutions, programs and platforms and issued official statements of the position of the organization, the Attorney-General has not seen fit to refer

to a single resolution, declaration, or statement made by the Communist Party or its elected officials during the past twenty years.

THIRTIETH: The Communist Party of the United States of America originated in 1919 when a large number of members of the Socialist Party, also an unincorporated political association, severed their connections with that organization to form separate political bodies.

THIRTY-FIRST: At the aforesaid period, there were formed two organizations, the one known as the Communist Party and the other as the Communist Labor Party.

THIRTY-SECOND: In or about December, 1921, the aforementioned organizations, together with the Workers Council, a group of persons who had remained in the Socialist Party, and various trade union groups, as well as other small associations of persons, united to form the Workers Party of America.

THIRTY-THIRD: The aforesaid Workers Party became known as the Workers (Communist) Party of America in 1925, and finally in 1929 assumed the name of Communist Party.

> "The Workers Party was the first united organization of the American Communists; it was a sharp break with the romantic 'Leftism' of underground days for which it accepted no responsibility." (Earl Browder, The Communist, September, 1939, p. 795.)

THIRTY-FOURTH: During this first decade, the development of the Communist Party was hindered by factional disputes engendered by persons within the organization who declined to adhere to the principles upon which the Party was founded. By 1929, these persons had been expelled from membership in the organization.

THIRTY-FIFTH: Thereafter, the Communist Party conducted its affairs under an unwritten constitution until 1938, when the general laws and rules which had been in effect during the past decade were codified in the Constitution of the Communist Party of the United States of America, adopted officially by the Tenth National Convention, the organization's highest governing body, in May, 1938. A copy of the Constitution of the Communist Party is attached hereto and marked Exhibit "A".

THIRTY-SIXTH: The Communist Party of the United States of America is an American political party; makes its own decisions; and maintains its own policies and activities guided solely by the needs and desires of the American people and based upon the social, political and cultural institutions of our country.

THIRTY-SEVENTH: The petitioner submits further, that its policies and activities are necessarily constantly undergoing changes as the basic conditions upon which these policies and activities were grounded are themselves altered.

THIRTY-EIGHTH: In formulating its policies and determining the nature of its activities, the petitioner studies the conditions prevailing in the nation at the given time, and the relation of those conditions to past events.

THIRTY-NINTH: The petitioner adopts this scientific method because it believes that present customs, institutions and ideas are the outgrowth of the historical development of our country.

FORTIETH: For the aforesaid reasons, the petitioner has studied and analyzed the history of our country, honors and endeavors to emulate the great leaders of the past, Thomas Jefferson, Andrew Jackson, Thomas Paine, and Abraham Lincoln.

FORTY-FIRST: From its study of the history of our country, the petitioner is fully cognizant of the opposition which the honored founders of our country encountered when they sought to establish a society consistent with the conditions that existed in their day—a society founded upon a democratic Constitution, a republican form of government, and the right of suffrage.

FORTY-SECOND: With equal understanding, the petitioner is aware of, and struggles against, those groups who oppose all efforts to improve our system of society, or fundamentally change that society appropriate to modern conditions.

FORTY-THIRD: The petitioner bases its principles and policies upon the scientific law that the economic development of an epoch or of a nation is the foundation upon which particular social, political and cultural systems are erected; that this economic foundation of society is in a constant state of motion and change; and that when the economic structure of society is materially changed, the superstructure of social, cultural and political institutions will also change and become more compatible with the material economic changes.

FORTY-FOURTH: The petitioner submits that this law of social development provides the scientific explanation for the history of past eras, and provides the only reliable guide for the progress of present and future society.

FORTY-FIFTH: Because of this scientific analysis the principles evolved by the Communist Party, and, therefore, its policies and activities, are constantly being developed and improved; and the Party does not hesitate to replace outdated propositions and conclusions with new principles which correspond to new historical conditions.

FORTY-SIXTH: The principle and viewpoint enunciated by the founders and exponents of scientific socialism that

their theory is a guide to action and not a dogma emphasizes the need for the application of the theories of scientific socialism to the concrete settings of time and space.

FORTY-SEVENTH: Thus, prior to the attack at Pearl Harbor, the petitioner had officially stated that it did not make any proposals of a specific communistic or socialistic character during the war or the immediate post-war period, because such proposals would not, under present conditions, receive a majority support of the American electorate; and that such proposals could only have the effect of dividing the people on nearly all issues and thereby weakening the strength of the nation for whole-hearted prosecution of the war.

FORTY-EIGHTH: In accordance with the aforesaid official statement of the petitioner, and in the interest of national unity, it being clear that the so-called system of private enterprise would be the system under which the war would be prosecuted and reconstruction in the post-war world achieved, the petitioner pledged itself to give its full support to the fulfillment of these tasks under that system which obviously will prevail in this period—the system of capitalism; i.e., the so-called "private enterprise".

FORTY-NINTH: However, in the broad historical perspective, the petitioner seeks to convince the American people that a change from the capitalist to the socialist form of society has been made necessary by the enormous development of modern industry and the centralization of capital, and that the overwhelming majority of the American people would be benefited immediately—and the total of the people ultimately—by such a change.

FIFTIETH: The petitioner has not withdrawn, but continues to affirm, its conclusion that the economic development of human society has reached a stage in which the

capitalist mode of production must be replaced within this historic epoch by a socialist form of organization, in which the large industrial and financial corporate properties, which have reached the state of monopoly and which constitute the chief social means of production, must become the property of the nation by the will of the majority of the American people, to be expressed at the ballot-box.

FIFTY-FIRST: The petitioner submits that in the aforesaid respect it may be compared to the formative period of the Republican Party, which came into existence with progressive aims in 1852.

FIFTY-SECOND: The founders of the Republican Party, believing that the feudal system prevailing in the South, and which the Southern slave owners sought to extend everywhere, hampered the development of modern industry and democracy, organized themselves into a political party to convince the American people of the truth of their views. Fortunately, the Republican Party, then under the leadership of Abraham Lincoln, met with success.

FIFTY-THIRD: The Communist Party respectfully submits to this Court that its democratic program and activities are based on the aforestated laws of social development and should be tested on that basis.

FIFTY-FOURTH: The petitioner submits that it seeks only an ever-increasing development and expansion of our productive forces, the mines, the factories, the farms, so that they may produce increasing quantities of material goods which can be utilized by all the inhabitants of our nation. The petitioner respectfully directs the attention of this Court to the preamble of its Constitution.

> "The Communist Party of the United States of America is a working class political party carrying forward today the traditions of Jefferson, Paine, Jackson and Lincoln, and of the Declaration of Independ-

ence; it upholds the achievements of democracy, the right of 'life, liberty, and the pursuit of happiness,' and defends the United States Constitution against its reactionary enemies who would destroy democracy and all popular liberties; it is devoted to defense of the immediate interests of workers, farmers, and all toilers against capitalist exploitation, and to preparation of the working class for its historic mission to unite and lead the American people to extend these democratic principles to their necessary and logical conclusions."

FIFTY-FIFTH: The petitioner properly endeavors to put its principles into practice in every sphere of political and social life.

FIFTY-SIXTH: The petitioner has advocated the principle of unionism with collective bargaining and especially industrial unionism as a further advance for the workers of our nation.

FIFTY-SEVENTH: The petitioner has as one of its fixed policies the principle of equal rights for Negroes, believing that discrimination against thirteen million Negroes is a survival of an outworn and reactionary system, and a factor which retards social and political and economic advance of the entire nation.

FIFTY-EIGHTH: In the field of foreign affairs, the petitioner has adopted policies fully familiar to the American people.

FIFTY-NINTH: The petitioner has urged upon our government the adoption of a good-neighbor policy believing that a practice of repression of other nations is not only immoral, but stifles the growth of social forces in the oppressed nation, as well as our own, thus retarding social development and progress.

SIXTIETH: For nine years, since the Italian attack on Ethiopia in 1935, the petitioner advocated a policy of collective security among those nations who were prepared to resist fascism, a policy which was resisted by other groups and political associations.

SIXTY-FIRST: The petitioner submits that it is now historically verifiable that had the policy of collective security which it advocated been adopted, such a policy would have been in the true national interest of the United States and would have served to protect democracy everywhere; would have been the most effective method of preventing the outbreak of the present world war, and the resultant destruction of life and property.

SIXTY-SECOND: The petitioner has conducted election campaigns in accordance with constitutional and statutory provisions applicable to those who exercise the franchise.

SIXTY-THIRD: The petitioner has nominated candidates of its own choosing, seeking office on platforms which specifically set forth its views on the issues of the day and its program for the welfare of the nation, and its candidates have campaigned throughout the country on these platforms.

SIXTY-FOURTH: The petitioner submits that an examination of its platforms in the past three presidential campaigns, is ample proof that its policies were determined strictly on its analysis of prevailing conditions and are consistent with the general law of social development upon which its policies are based.

SIXTY-FIFTH: The petitioner understands that its principles, and the social system which it advocates for the United States, is opposed by groups who are interested in forestalling social progress, and that its views have as yet not been accepted by large numbers of persons. However, it states:

"We of the Communist Party never did and never will hold to a program of forcible establishment of socialism against the will of the people. While the majority of the people, and above all of the working class, do not yet accept the program of socialism, our program of socialist reconstruction of society is a matter for educational work to win the majority, while our practical and immediate political work is to be in the forefront in the organization of the majority of the workers and of the people generally, against the reactionary menace to their rights and interests, for a program of betterment of their lives such as the majority is ready to accept and fight for now—the program of the People's Front. If our understanding of history is correct, this is the surest and least difficult road to winning the majority for socialism in the long run."

SIXTY-SIXTH: The determined and unqualified support of the war of our country by the Communist Party of the United States of America; the readiness of every member of the Communist Party to make every sacrifice in defense of our liberties, our democratic institutions, and our country's existence and independence; to do everything possible to strengthen our armed forces; to develop to the maximum the production of war materials, all contradict and disprove the spurious charge that Communists advocate or seek to overthrow our government by force and violence, or otherwise.

SIXTY-SEVENTH: The position of the Communist Party of the United States of America, its support of the war policies of the Government of our country is not an accident, but is consistent with and flows directly from all the principles that have guided the activities of your petitioner throughout its existence. No Communist Party, no party guided by the principles of Marxism, could have adopted a different position, and, as will presently appear, this position is not newly acquired since Pearl Harbor.

SIXTY-EIGHTH: As early as 1933, soon after Hitler came to power, the petitioner called attention to the danger of Nazi aggression and urged measures to preserve world peace and collective security and to safeguard our national independence and democratic institutions.

SIXTY-NINTH: The alertness of the Communist Party to this world danger was made possible by the application of the scientific principles of Marxism, principles which are applied as a guide to action and not as dogma, and upon which principles the Party is founded.

SEVENTIETH: Unthinking persons are led by the Attorney-General to believe that the petitioner became alert to this world danger "only after June, 1941", when Russia was attacked, and from this false premise it is argued that petitioner's policy is shaped "in the interest of Russia"; both premise and conclusion are untrue, for the petitioner first made its demand for a policy of coalition to "Stop Hitler, Mussolini and Japan", not in 1941, but six years earlier—in 1935; it made the demand not on behalf of Russia, but directly on behalf of Ethiopia and, in a greater sense, it was made because of a view—now generally accepted—that this was the only sound foreign policy in the interest of our country; it made a second demand that our country join in forming such an anti-Axis coalition in 1936, in behalf of Spain; it made a third demand that our country adopt this foreign policy in 1938, in the hope of saving Czechoslovakia from Germany. There is no instance in which the petitioner has made a proposal concerning foreign relations that is not now generally conceded to have been sound policy from the point of view of the interests of the United States.

SEVENTY-FIRST: Based upon its understanding of world events and a policy dedicated to the welfare of the American people, the Communist Party exposed the Japanese attack upon China as a threat to our country's security and independence.

SEVENTY-SECOND: In similar fashion and for similar reasons, the Communist Party condemned the fascist invasion of Spain.

SEVENTY-THIRD: In similar fashion and for similar reasons, your petitioner exposed and fought against the policy of appeasement which led to the Munich betrayal.

SEVENTY-FOURTH: In similar fashion and for similar reasons, your petitioner urged collaboration between our country and the Soviet Union in order to safeguard peace.

SEVENTY-FIFTH: In similar fashion and for similar reasons, the Communist Party throughout the period from September, 1930, to June 22, 1941, struggled constantly against those forces which sought to come to an agreement with Hitler at the expense of the small nations for a war against the Soviet Union.

SEVENTY-SIXTH: The petitioner submits that its policies are based upon the natural concern of the American citizens who constitute it, that our country pursue a sound and democratic course. Its activities have served to create greater understanding among the American people concerning the danger of fascism and fascist aggression; to promote those policies now embodied in our national policy and the policy of the United Nations, and to foster the closest collaboration and alliance of our country with the Soviet Union, China and Great Britain.

SEVENTY-SEVENTH: The petitioner respectfully submits further that its policies through all the years of its existence on the domestic front; the struggle for labor organization; for greater social security; for equal rights for the Negro people; for the battle for production; for the exposure of the Hitler fifth column in this country, must now be recognized to have been helpful in the development of today's national unity.

SEVENTY-EIGHTH: The petitioner submits to this Court that at the present time when the entire country is engaged in a life and death struggle for its survival, the Communist Party subordinates all other activities for the one purpose of winning the war; all its work, all its activity, has this goal in mind and nothing else; all its proposals spring solely from the consideration of how to effectively strengthen the war effort; and in this war, which is not a war of socialism, but a war of national liberation, the Communist Party advocates and fights for the unity of all patriotic Americans regardless of class, creed, color, national origin, or political belief.

SEVENTY-NINTH: The most profound example of the petitioner's desire to strengthen the unity of all progressive and democratic forces in the nation in the support of the war effort and the solution of the problems of the post-war era, is a proposal recently made by its National Committee to a convention of the Party that it cease to call itself a "party" and adopt a probable future designation of itself as an "association". The significance of this proposed change is explained in a report of Earl Browder, the General Secretary of the petitioner:

> "It is around the concept 'party' rather than of 'Communist' that there exists today in America the most practical obstruction to our cooperative relationships with other democratic groups.
>
> "What is called the 'two party system' in the United States is an old tradition which dominates most American minds. It recognizes as a 'party' only that particular combination which is in power and the combination of the opposition which is an immediate alternative to take power. All lesser political groupings are contained within the 'two major parties', which in fact are coalitions of many groups which in most countries would be separate parties; or if the lesser group takes the name 'Party', and becomes one

of the so-called 'minor parties', it is regarded as a sect which has withdrawn itself from the practical political life of the nation. * * *

"Obviously, to realize the promise of Teheran, the broadest democratic-progressive united front must be maintained in the United States. Equally obviously, the Communists will be a part of that united front. The Communist organization will be in a long-term alliance with forces much larger than itself.

"It follows from this fact that, in the peculiar American sense of the word, the Communists will not be operating as a 'Party', that is, with their own separate candidates in elections, except under special circumstances when they may be forced to act through 'independent candidates.' * * *

"All these considerations point to the expediency of a decision that the Communist organization in the United States should adjust its name to correspond more exactly to the American political tradition and its own practical political role.

"Such a decision would be that, instead of being known as 'The Communist Party of the United States', our organization should call itself something like 'American Communist Political Association' * * *

"Under such a name, we will find it much easier to explain our true relationship with all other democratic and progressive groupings which operate through the medium, in the main, of the two-party system, and take our place in free collaboration at their side."

EIGHTIETH: The petitioner submits that such a fundamental step could only be taken by a party which does not espouse the doctrine of force and violence as a means of effecting political and social change.

EIGHTY-FIRST: The petitioner respectfully addresses the Court in the words of the Manifesto of the National Committee of the Communist Party of the United States of

America, addressed to the American people on December 8, 1941, the day after the treacherous attack upon Pearl Harbor and the Axis acts of war against our country:

> "Never in the history of our country has the need for unity of the nation been so great as now. The Communist Party pledges its loyalty, its devoted labor and last drop of its blood in support of our country in this greatest of all the crises that ever threatened its existence. In the tradition of the Communist leaders who in 1861 joined the United States Army under commissions issued by President Lincoln, 100,000 American Communists today step forward to support the bigger war against slavery, a war in defense of the whole world's freedom.
>
> * * * * * * *
>
> "All Americans must join in one mighty stream of national unity to assure that 'government of the people, by the people, and for the people shall not perish from the earth.'
>
> "Everything for national unity!
>
> "Everything for victory over world-wide fascist slavery!"

EIGHTY-SECOND: The Attorney-General in his decision has placed his reliance upon quotations from three documents dated, respectively, 1848, 1920, and 1921.

EIGHTY-THIRD: In the aforesaid decision, the following excerpt from the Communist Manifesto of 1848 appears:

> "The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions."

EIGHTY-FOURTH: The petitioner respectfully submits that the Attorney-General has torn the aforesaid quota-

tion out of factual and historical context and created thereby a wholly erroneous and misleading impression.

EIGHTY-FIFTH: The Attorney-General failed to cite in his decision another statement which appears in the Communist Manifesto: "Finally they (The Communists) labor everywhere for the union and agreement of the democratic parties of all countries"; nor did he cite the statement on page thirty of the same Manifesto, wherein it is stated: "We have seen above, that the first step in the revolution by the working classes, is to raise the proletariat to the position of ruling class, to establish democracy."

EIGHTY-SIXTH: The apparent contradiction between these quotations in the same document gives the clue to the erroneous interpretation made by the Attorney-General of the political theories contained in the Communist Manifesto —the result of his unscientific method of tearing an isolated sentence out of context.

EIGHTY-SEVENTH: The petitioner respectfully submits that Karl Marx, in the Communist Manifesto, was setting forth the law of social development which he had evolved; that he was presenting the general principles of historical development of society and social systems, from the slave era of early Rome to the capitalist period of his day, 1848; that he was projecting the system of socialism as the next historical stage, and, at the same time, enunciating the specific policies applicable to the specific conditions which prevailed in 1848 in Germany, France, Poland and Switzerland, a period of revolution throughout Europe. (See Section IV of the Communist Manifesto entitled, *Position of the Communists in Relation to the Various Existing Opposition Parties.*)

EIGHTY-EIGHTH: The Communist Manifesto, upon which the Attorney-General relies, itself programatically negatives the idea of force and violence by its advocacy of

social gains similar to those now existing in this country, such as collective bargaining, social security, and taxation based on ability to pay; the petitioner submits that the aforementioned social advances have been gained only after years of tireless effort by social minded progressive people, especially labor, whose opponents sought to discredit them by describing them as dangerous radicals who deserved, and who often suffered, imprisonment and death.

EIGHTY-NINTH: It is historically verifiable that Karl Marx prepared the Communist Manifesto as an official, and at the direction of the Communist League, in London.

NINETIETH: The petitioner submits further that it is also historically verifiable that the quotation culled from the Communist Manifesto by the Attorney-General was addressed to the peoples of the countries of Germany, Italy and other parts of Europe in the 1840's in support of their progressive struggles for democratic rights and the abolition of the remnants of the feudal system.

NINETY-FIRST: In other writings, Karl Marx specifically excepted the United States and Great Britain from those countries on the monarch-ridden mainland of Europe in which he believed the conditions at that time would lead to violent overthrow of states.

NINETY-SECOND: The historical conditions which existed at the time when the Communist Manifesto appeared containing the statement extracted by the Attorney-General is further exemplified in every history book used in American schools wherein the leaders of these revolutionary movements against feudalism, such as Carl Schurz and Louis Kossuth, are acclaimed as heroes and great pride taken in the fact that our country furnished them with asylum when they fled into exile.

NINETY-THIRD: The petitioner respectfully submits that Karl Marx, writing in a period of revolutionary upsurge against feudalism, and at a time when the peoples in Europe were striving and aspiring for democratic rights, would have been guilty of gross hypocrisy and sheer absurdity if he had maintained that these social changes could be brought about by peaceful requests and petitions to the then ruling autocrats, dictators, and tyrants.

NINETY-FOURTH: The petitioner further submits that such a fallacious conclusion would be equivalent to a statement by a leader of the United Nations counseling the people of the conquered nations to employ peaceful methods against Quisling or Laval or Hitler.

NINETY-FIFTH: The Attorney-General makes the fundamental error of tearing living facts out of their historical context.

NINETY-SIXTH: The fallacious and unscientific method used by the Attorney-General would condemn the Republican Party and its members because of the admirable and wholly correct theory of social change enunciated by Abraham Lincoln in his First Inaugural Address, a statement which if torn out of textual and historical context would similarly be used to establish that the great President who defended the United States during the Civil War adocated the forcible overthrow of our government:

> "This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing Government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember or overthrow it."

NINETY-SEVENTH: The petitioner respectfully submits that a fair and scrupulous historian would appraise the words and writings of Abraham Lincoln in their historical setting and would correctly conclude that Abraham Lincoln

defended the government of the United States against those who sought its destruction, a position taken by other great Americans, patriotic Americans, including Communists.

NINETY-EIGHTH: On January 12, 1848, Abraham Lincoln, then a young Congressman from Illinois, arose in the House and stated:

> "Any people anywhere being inclined and having the power have a right to rise up and shake off the existing government, and form a new one that suits them better. This is a most valuable, a most sacred right—a right which we hope and believe is to liberate the world. Nor is this right confined to cases in which the whole people of an existing government may choose to exercise it. Any portion of such people that can may revolutionize and make their own so much of the territory as they inhabit. More than this, a majority of any portion of such people may revolutionize, putting down a minority, intermingling with or near about them, who may oppose this movement. Such a minority was precisely the case of the Tories of our own revolution. It is a quality of revolutions not to go by old ideas or old laws; but to break up both, and make new ones." (Stephens, Alexander H., *The War Between the States*, Vol. I, p. 520.)

NINETY-NINTH: The petitioner further submits that the Democratic Party and its principles would be chargeable, if the unscientific method of the Attorney-General were adopted, with unlawful conduct because Thomas Jefferson declared that: "A little rebellion now and then is a good thing and as necessary in the political world as storms in the physical," and "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure."

ONE HUNDREDTH: The petitioner maintains that the words of great patriots and great leaders when abstracted from their historical setting, may be made to appear as the words of an enemy of democracy; but when placed in their appropriate setting, they become appropriate and encouraging guides for action by freedom loving peoples.

ONE HUNDRED FIRST: The words of Karl Marx, written for an Europe of 1848, spurred the peoples of that day to free themselves from the rule of tyrants and are appropriate again today for the enslaved peoples in countries controlled by the Axis powers.

ONE HUNDRED SECOND: While the Attorney-General erroneously transposes a statement of general principles from a document written in Europe almost one hundred years ago to the present historical conditions in the United States of America, he fails to mention the specific utterances made by Karl Marx concerning the capitalist system and the political institutions of the United States.

ONE HUNDRED THIRD: The Revolutionary War which gave us our national existence and independence, and the Civil War which saved and maintained the Union, were the sources from which Karl Marx drew inspiration and experience, as examples of progressive social development, consistent with his theories of social change.

ONE HUNDRED FOURTH: These historic struggles for democracy and the progress of our country have inspired the American people and the American Communists, as well as the Communists in the entire world.

> "As in the Eighteenth Century, the American War of Independence sounded the tocsin for the European middle class, so in the Nineteenth Century the American Civil War sounded it for the European working class." (Marx and Engels Selected Correspondence, p. 136.)

ONE HUNDRED FIFTH: The Attorney-General fails to mention the official records of correspondence between Karl Marx and President Lincoln, transferred through United States Ambassador Adams in London, in one of which letters Karl Marx wrote:

> "From the commencement of the titanic American strife the workingmen of Europe felt instinctively that the Star-Spangled Banner carried the destiny of their class." (Marx and Engels, *Civil War in the United States.*)

ONE HUNDRED SIXTH: The Attorney-General, while placing reliance upon the historic Communist Manifesto in support of his erroneous findings, ignored the fact that Karl Marx headed a world-wide movement organized to obtain popular support for the United States armed forces against the effort made to overthrow the Government of the United States by force and violence.

ONE HUNDRED SEVENTH: The interpretation of the Communist Manifesto made by the Attorney-General is completely inconsistent with the recorded facts that two of the closest political associates of Karl Marx, were Brig. Gen. August Willich and Col. Joseph Weydemeyer, both of the United States Army, prominent Communists, commissioned by President Abraham Lincoln, who served faithfully in the Civil War.

ONE HUNDRED EIGHTH: The patriotic conduct of these political associates met with the unstinted approval of Karl Marx, who found their conduct completely consistent with the principles enunicated in the classic document the Communist Manifesto.

ONE HUNDRED NINTH: The Attorney General failed to mention the article by Karl Marx published in the New York Daily Tribune on February 1, 1862, wherein our government, then headed by President Abraham Lincoln

was admiringly termed "The only popular government in the world."

ONE HUNDRED TENTH: The petitioner submits that the Marxist theories of scientific socialism (Communism) do not advocate and are incompatible with the advocacy of force and violence except in the sense of organized military defense of democracy, which is a part of the philosophy of citizenship of every good American; no individual has the right to judge the petitioner by standards of the false philosophy of pacifism.

ONE HUNDRED ELEVENTH: The completely false theory of force and violence which the Attorney-General wrongfully attributes to the petitioner is the theory that social changes and advances can be accomplished by eliminating in coup d'etat fashion the persons, groups or classes who happen to possess political control.

ONE HUNDRED TWELFTH: The petitioner submits that the theories of Marxism have never embodied the absolute necessity or even the inevitability of force and violence to accomplish social changes in general, or the transition to socialism in particular.

ONE HUNDRED THIRTEENTH: In 1872, nearly twenty-five years after the appearance of the Communist Manifesto, Karl Marx stated:

> "Of course, it must not be supposed to imply that the means to this end (the establishment of a new organization of labor) will be everywhere the same. We know that special regard must be paid to the institutions, customs and traditions of various lands; and we do not deny that there are certain countries such as the United States and England in which the workers may hope to secure their ends by peaceful means." (Stekloff, *History of the First International* (Eng. Tr.), p. 240.)

ONE HUNDRED FOURTEENTH: When the Czar was overthrown by the Russian people and the Provisional Government co-existed with the Soviets, Lenin advised taking advantage of the possibilities of the situation to "secure a peaceful development of the revolution."

> "The democracy of Russia, the Soviets and the Socialist-Revolutionary and the Menshevik parties, are now confronted with the opportunity, very seldom to be met with in the history of revolution, of securing the convocation of the Constituent Assembly at the appointed date without further delay, of saving the country from military and economic catastrophe, and of securing a peaceful development of the revolution.
>
> "By seizing power now—and this is probably their last chance—the Soviets could still secure a peaceful development of the revolution, the peaceful election of deputies of the people, the peaceful struggle of parties within the Soviets, the testing of the programmes of the various parties in practice, and the peaceful transfer of power from party to party.
>
> "If this opportunity is allowed to pass, the entire course of development of the revolution, from the movement of May 3 (April 20) to the Kornilov affair, points to the inevitability of a bitter civil war between the bourgeoisie, and the proletariat * * * On the other hand, the proletariat would support the Soviets in every way if they were to avail themselves of their last chance of securing a peaceful development of the revolution." (Lenin, V. I., *Selected Works.*)

ONE HUNDRED FIFTEENTH: The petitioner submits as another example of the application of the principles of scientific socialism the conduct of the Communist Party in Spain when it staunchly defended the country against the rebellion by force and violence initiated by Franco and the Fascists at the instigation of Hitler.

ONE HUNDRED SIXTEENTH: In similar fashion, the Communist Party of China has by its policies and deeds strengthened the unity of the Chinese nation and heroically in unison with the Chinese Government, is fighting and destroying the Japanese invaders; and at the same time adapting its program to the economic development and institutions of China.

ONE HUNDRED SEVENTEENTH: The terms "Communist" or "Communist Parties" are used in the foregoing paragraphs in respect to countries other than the United States in the same manner or sense as the term "democrat" or "republican" is used for all countries, without implying a necessary connection as between those of one country and those of another. As Lincoln said:

> "The strongest bond of human sympathy, outside of the family relationship, should be one uniting all working people of all nations and tongues and kindreds."

ONE HUNDRED EIGHTEENTH: The petitioner submits that the aforementioned examples of unswerving loyalty by the various Communist Parties of the world are the clearest evidence that "force and violence" are not inherent elements of the laws of scientific socialism.

ONE HUNDRED NINETEENTH: The Attorney-General places further reliance in his decision concerning the objectives of the Communist Party upon a quotation from a document allegedly adopted in 1921 as the program of the American "section."

ONE HUNDRED TWENTIETH: The petitioner maintains that the history of the development of the Communist Party in America conclusively establishes that it cannot and does not take responsibility for any document or activity of any group prior to the formation of the Worker's Party in December, 1921, and that the Communist Party

since 1921 has repudiated the ideas and expressions contained in the quotation relied upon by the Attorney-General.

ONE HUNDRED TWENTY-FIRST: The petitioner has been compelled by reason of the unlawful conduct on the part of individuals and officials of government to protect itself against the spurious versions of Marxism foisted upon it, and has, therefore, adopted the following official resolution:

> "That the Convention formally and officially declares that the Communist Party of the United States is responsible for no political document, policy, book, article, or other expression of political opinion, except such as are issued by itself, through its regularly constituted leadership, on the basis of the Eleventh National Convention deliberations and decisions, and of this present special Convention." (*Report to the Emergency National Convention of the Communist Party*, New York, November 16, 1940.)

ONE HUNDRED TWENTY-SECOND: The Communist Party has repeatedly denied the slanderous assertions made against it through its official spokesmen and by its very Constitution.

> "Because we are advocates of a future socialist system, which as yet is supported only by a small minority of the population, we Communists declare that it is the duty of adherents of socialism to join hands with all progressives not ready for socialism, on the basis of such a platform of democratic and progressive measures, which will guarantee our country from the horrors of fascism and war, and make the future social transformation less difficult and painful." (Browder, Earl, *The People's Front* [1938], p. 85.)

* * * * * *

> "Mr. Browder, we have heard a great deal of Communists advocating the overthrow of the United States

Government by force. I think it will clarify the situation greatly were you to tell us just what the stand of your Party is on that particular question.

"The Communist Party does not advocate force and violence. It is a legal party and defends its legality. Communists are not conspirators, not terrorists, not anarchists. The Communist Party is an open revolutionary party, continuing under modern conditions the revolutionary traditions of 1776" (*supra*, p. 197).

* * * * * *

"The Communist Party repudiates now as in the past, all theories or proposals looking toward a forcible imposition of Socialism or any utopia upon the majority of the people. We repudiate the 'reckless resolve to seize power' by any minority. If there should arise in America anything similar to the situation in Spain, where the democratic republic while repulsing the fascist invasion was stabbed in the back by the 'uncontrollable extremists' (a minority of the anarchists and the Trotskyist F.O.U.M.), that we, like our brothers of the Spanish Communist Party would be in the forefront of the struggle to suppress such 'extremists,' who are really agents of fascism, and render them harmless" (*supra*, p. 239).

* * * * * *

"The Communist Party must smash once and for all the superstition, which has been embodied in a maze of court decisions having the force of law, that our Party is an advocate of force and violence, that it is subject to laws, (Federal immigration laws, State 'criminal syndicalism' laws) directed against such advocacy. The Communist Party is not a conspirative organization, it is an open revolutionary Party, continuing the traditions of 1776 and 1861; it is the only organization that is really entitled by its program and work to designate itself as 'sons and daughters of the American revolution')."

"Communists are not anarchists, not terrorists. The Communist Party is a legal party and defends its legality. Prohibition of advocacy of force and violence does not apply to the Communist Party; it is properly applied only to the Black Legion, the Ku Klux Klan and other fascist groupings, and to the strikebreaking agencies and the open-shop employers who use them against the working class, who are responsible for the terrible toll of violence which shames our country" (*supra*, p. 112).

* * * * * *

"The Communist Party of the U.S.A. upholds the democratic achievements of the American people. It opposes with all its power any clique, group, circle, faction or party which conspires or acts to subvert, undermine, weaken or overthrow any or all institutions of American democracy whereby the majority of the American people have obtained power to determine their own destiny in any degree. It condemns and opposes all policies and acts of sabotage, espionage, and all other forms of 'Fifth Column' activity. The Communist Party of the U.S.A., standing unqualifiedly for the right of the majority to direct the destinies of our country, will fight with all its strength against any and every effort, whether it comes from abroad or from within, to impose upon our people the arbitrary will of any selfish minority group or party or clique or conspiracy" (*Constitution of the Communist Party of the United States of America, Article* VI, Sec. 1).

One Hundred Twenty-third: The quotation contained in the decision of the Attorney-General from "The Thesis and Statutes of the Third International," a document formulated in 1920, is another illustration of the unscientific and illegal methods adopted by the Attorney-General.

ONE HUNDRED TWENTY-FOURTH: The petitioner submits that it is an historically verifiable fact that the Communists in America were not affiliated with the Third International in 1920; and the Petitioner is not at the present time affiliated with any international organization or association.

ONE HUNDRED TWENTY-FIFTH: The Communist Party of the United States of America is an American political party; makes its own decisions; and maintains its own policies and activities, guided solely by the needs and desires of the American people and based upon the social, political and cultural institutions of our country.

ONE HUNDRED TWENTY-SIXTH: Moreover, Communists do not even copy and blindly apply, regardless of time, place and consequences, the more extreme of the precepts on violence uttered by the founders of our nation—enunciated by them as guides to action against tyranny and in the defense of human progress under the different circumstances of an earlier time, because of the petitioner's belief that there can be no mechanical transposition of the precepts of one era to another, nor their application to all countries at the same time.

ONE HUNDRED TWENTY-SEVENTH: The petitioner submits that only the naive and biased would ascribe to humanity's leaders, past and present, the dogmatic advocacy of force and violence in all countries and under all conditions. Those who endeavor to create such misconceptions render the greatest disservice to the nation and the democratic process.

ONE HUNDRED TWENTY-EIGHTH: For all of the aforestated reasons, the petitioner submits that the charge made by the Attorney-General that it advocates force and violence, is untrue; that the issue of force and violence is one totally irrelevant to and unconnected with the nature of the

Communist Party; that the Communist Party cannot and does not by reason of the tenets of scientific socialism which it upholds, advocate the forcible overthrow of the government of the United States.

ONE HUNDRED TWENTY-NINTH: The petitioner submits that American constitutional law guaranteeing the republican form of government and assuring popular suffrage and free elections, adopts as its very essence the principle that the electorate and the electorate alone passes judgment at the polls upon all political programs; and the same Constitution guarantees the free offering to the public by means of speech, press and assemblage of such political doctrines and programs.

ONE HUNDRED THIRTIETH: The petitioner submits that it was not within the province of the Attorney-General, as administrative official of government, to pass upon the merits of the program of any political party of American citizens; and that this function cannot be thrust upon a court by a subterfuge wherein it is pretended that a judgment is being passed upon an individual's qualifications as indicated by his affiliation with a political party in the United States.

ONE HUNDRED THIRTY-FIRST: The findings made by the Attorney-General concerning the objectives of the Communist Party deprived the petitioner of its constitutional rights of freedom of speech, freedom to assemble and to petition the government for a redress of grievances, in violation of the First and Fifth Amendments to the Constitution of the United States.

ONE HUNDRED THIRTY-SECOND: The aforesaid findings made by the Attorney-General denies to the petitioner the equal protection of the laws, in violation of the Fifth Amendment to the Constitution of the United States.

ONE HUNDRED THIRTY-THIRD: The aforesaid findings were made by the Attorney-General in violation of the Fifth Amendment to the Constitution of the United States in that it deprived the petitioner of its liberty and property without due process of law.

ONE HUNDRED THIRTY-FOURTH: As a result of the findings and order made by the Attorney-General concerning the objectives of the Communist Party, the petitioner has suffered and continues to suffer injury and damage, and is threatened with future injury and damage to its liberty and property as guaranteed by the Constitution of the United States.

ONE HUNDRED THIRTY-FIFTH: As a result of the findings and order made by the Attorney-General, damage is threatened to the reputation of the petitioner and its members and to the esteem in which they are held by large numbers of the American people.

ONE HUNDRED THIRTY-SIXTH: The legal and constitutional right of the American citizens who are organized in the petitioner party to disseminate ideas and principles and to promulgate platforms and programs has been violated by the aforesaid findings and order of the Attorney-General, and its ability to nominate and elect candidates of its own choice, or to support in its public activity other candidates deemed by it to represent the public interest and to present its views to the electorate, has been obstructed.

ONE HUNDRED THIRTY-SEVENTH: The findings and order made by the Attorney-General, unjustly attacking an American political party, are injurious to national unity and national morale, both essential to winning the war.

ONE HUNDRED THIRTY-EIGHTH: The petitioner has no adequate or other remedy, in any forum, at law or in equity, to restrain the continuing and threatened damages to its liberty and property.

ONE HUNDRED THIRTY-NINTH: On the 25th day of September, 1942, a petition for a writ of habeas corpus by Harry Renton Bridges was argued before one of the Judges of the United States District Court for the Northern District of California. Prior to such argument, your petitioner made efforts to be permitted to intervene in the said proceeding and applied by petition and notice of motion for such leave to intervene; said motion was argued orally on the said 25th day of September, 1942, and the said application was denied; the decision by the said Judge in the habeas corpus proceeding was not made until the 8th day of February, 1943; the petitioner has thus sought leave to be heard in an application to the Attorney-General of the United States and to the United States District Court; such leave has been denied, and justice requires that this application for leave to intervene herein be granted by this Circuit Court.

ONE HUNDRED FORTIETH: The interest of the petitioner and of its members is not represented by any party to the proceeding now pending in this Court, nor should the petitioner be required to entrust the defense of its interest to either party in the proceeding.

ONE HUNDRED FORTY-FIRST: The adequate representation of petitioner's interest requires that it be permitted to intervene for the purpose of taking all such steps as may be appropriate for its protection in the proceeding.

ONE HUNDRED FORTY-SECOND: If the findings and order made by the Attorney-General are sustained by a judgment of this Court, the rights of the petitioner will be prejudiced.

ONE HUNDRED FORTY-THIRD: The petitioner's claim and the main proceeding herein have a question of law and fact in common.

WHEREFORE, the petitioner respectfully requests that an order be made granting the petitioner's application to intervene in the proceeding herein, and that an order be made directing the District Court to remand the deportation proceeding to the Immigration and Naturalization Service of the Department of Justice with directions to the said Department to give the petitioner a full and fair opportunity to be heard concerning the objectives of the Communist Party, including the right of confrontation and cross-examination and the right of the petitioner to present evidence, oral and documentary, in its own behalf, and such other and further relief as the Court may direct.

Dated: February 16, 1944.

WILLIAM Z. FOSTER,
National Chairman,
Communist Party, U. S. A.

EARL BROWDER,
General Secretary,
Communist Party, U. S. A.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:
CITY OF NEW YORK,

WILLIAM Z. FOSTER and EARL BROWDER, being duly sworn, depose and say that they are, respectively, the National Chairman and General Secretary of the Communist Party of the United States of America, the applicant for intervention herein; that they have read the foregoing petition and know the contents thereof; that the same is true to their own knowledge, except as to the matters herein stated to be alleged on information and belief, and as to those matters they believe them to be true.

WILLIAM Z. FOSTER.
EARL BROWDER.

Sworn to before me this
16th day of February, 1944.

MAX KITZES,
Notary Public.
Bronx County No. 159, Register's No. 184-K-5.
Certificate filed in New York County No. 879,
Register's No. 541-K-5.
Commission expires March 30, 1945.

EXHIBIT "A"

The Constitution of the Communist Party of the United States of America adopted May, 1938, as amended.

PREAMBLE

The Communist Party of the United States of America is a working class political party carrying forward today the traditions of Jefferson, Paine, Jackson, and Lincoln, and of the Declaration of Independence; it upholds the achievements of democracy, the right of "life, liberty, and the pursuit of happiness", and defends the United States Constitution against its reactionary enemies who would destroy democracy and all popular liberties; it is devoted to defense of the immediate interests of workers, farmers, and all toilers against capitalist exploitation, and to preparation of the working class for its historic mission to unite and lead the American people to extend these democratic principles to their necessary and logical conclusions:

By establishing common ownership of the national economy, through a government of the people, by the people, and for the people; the abolition of all exploitation of man by man, nation by nation, race by race, and thereby the abolition of class divisions in society; that is, by the establishment of socialism, according to the scientific principles enunciated by the greatest teachers of mankind, Marx, Engels, Lenin, and Stalin, embodied in the Communist International; and the free cooperation of the American people with those of other lands, striving toward a world without oppression and war, a world brotherhood of man.

To this end, the Communist Party of the United States of America established the basic laws of its organization in this Constitution.

ARTICLE I

Name

The name of this organization shall be Communist Party of the United States of America.

ARTICLE II

Party Emblems

The highest Party authority in each State shall have power to select the emblem of the Communist Party of that State, taking into consideration the Statutes of said State applying thereto. Its design shall be in such form as shall represent the idea of the unity of worker and farmer.

ARTICLE III

Membership

Section 1. Any person twenty-one years of age or more, regardless of race, color, national origin, sex, or religious belief, who is a citizen of the United States, and whose loyalty to the working class is unquestioned, shall be eligible for membership.

Section 2. A Party member is one who accepts the Party program as determined by the Constitution and the conventions of the Party, attends the regular meetings of the membership Branch, pays dues regularly and is active in Party work.

Section 3. An applicant for membership shall be endorsed by at least two members of the Communist Party. Applications are subject to discussion and decision by the basic organization of the Party to which the application is presented.

Section 4. There shall be no members-at-large without special permission of the National Committee or of a State Committee.

Section 5. Party members two months in arrears in payment of dues cease to be members of the Party in good standing, and shall be informed thereof.

Section 6. Members who are four months in arrears shall be dropped from Party membership. Every member three months in arrears shall be officially informed of this provision, and a personal effort shall be made to bring such member into good standing. However, if a member whose membership is terminated for those reasons applies for re-admission within six months, he may, on the approval of the next higher Party committee, be permitted to pay up his back dues and keep his standing as an old member.

ARTICLE IV

Initiation and Dues

Section 1. The initiation fee for an employed person shall be 50 cents and for an unemployed person 10 cents.

Section 2. Dues shall be paid every month according to rates fixed by the National Committee.

Section 3. The income from dues shall be distributed to the various Party organizations as determined by the National Committee.

Section 4. Fifty per cent of the initiation fee shall be sent to the National Committee and 50 per cent shall remain with the State Organization.

ARTICLE V

All local or district assessments are prohibited, except by special permission of the National Committee. Special assessments may be levied by the National Convention or the National Committee. No member shall be considered in good standing unless he purchases stamps for such special assessments.

ARTICLE VI

The Party: Right and Duties of Members

Section 1. The Communist Party of the U. S. A. upholds the democratic achievements of the American people. It opposes with all its power any clique, group, circle, faction or party which conspires or acts to subvert, undermine, weaken or overthrow any or all institutions of American democracy whereby the majority of the American people have obtained power to determine their own destiny in any degree. It condemns and opposes all policies and acts of sabotage, espionage, and all other forms of "Fifth Column" activity. The Communist Party of the U. S. A., standing unqualifiedly for the right of the majority to direct the destinies of our country, will fight with all its strength against any and every effort, whether it comes from abroad or from within, to impose upon our people the arbitrary will of any selfish minority group or party or clique or conspiracy.

Section 2. Every member of the Party who is in good standing has not only the right, but the duty, to participate in the making of the policies of the Party and in the election of its leading Committees, in a manner provided for in the Constitution.

Section 3. In matters of state or local nature, the Party organizations have the right to exercise full initiative and

to make decisions within the limits of the general policies and decisions of the Party.

Secton 4. After thorough discussion, the majority vote decides the policy of the Party, and the minority is duty-bound to carry out the decision.

Section 5. Party members disagreeing with any decision of a Party organization or Committee have the right to appeal that decision to the next higher body, and may carry the appeal to the highest bodies of the Communist Party of the U. S. A., its National Committee and the National Conventions. Decisions of the National Convention are final. While the appeal is pending, the decision must nevertheless be carried out by every member of the Party.

Section 6. In pre-Convention periods, individual Party members and delegates to the Convention shall have unrestricted right of discussion on any question of Party policy and tactics and the work and future composition of the leading Committees.

Section 7. The decisions of the Convention shall be final and every Party member and Party organization shall be duty-bound to recognize the authority of the Convention decisions and the leadership elected by it.

Section 8. All Party members in mass organizations (trade unions, farm and fraternal organizations, etc.), shall cooperate to promote and strengthen the given organization and shall abide by the democratic decisions of these organizations.

Section 9. It shall be the duty of Party members to explain the mass policies of the Party and the principles of socialism.

Section 10. It shall be the duty of Party members to struggle against the national oppression of the Negro people; to fight for complete equality for Negroes in all phases of American life and to promote the unity of Negro and white toilers for the advancement of their common interests.

Section 11. All Party members who are eligible shall be required to belong to their respective trade unions.

Section 12. All officers and leading committees of the Party from the Branch Executive Committee up to the highest Committees are elected either directly by the membership or through their elected delegates. Every Committee must report regularly on its activities to its Party organization.

Section 13. Any Party officer may be removed at any time from his position by a majority of the vote of the body which elected him, or by the body to which he is responsible, with the approval of the National Committee.

Section 14. Requests for release of a Party member from responsible posts may be granted only by the Party organization which elected him, or to which he is responsible, in consultation with the next higher Committee.

Section 15. No party member shall have personal or political relationship with confirmed Trotskyites, Lovestoneites, or other known enemies of the Party and of the working class.

Section 16. All Party members eligible shall register and vote in the elections for all public offices.

ARTICLE VII

Structure of the Party

Section 1. The basic organization of the Communist Party of the U. S. A., is the Branch.

The Executive Committee of the Branch shall be elected once a year by the membership.

Section 2. The State Organization shall comprise all Party organizations in one state.

The highest body of the State Organization is the State Convention, which shall convene every two years, and shall be composed of delegates elected by the Conventions of the subdivisions of the Party or Branches in the State. The delegates are elected on the basis of numerical strength.

A State Committee of regular and alternate members shall be elected at the State Convention with full power to carry out the decisions of the Convention and conduct the activities of the State Organization until the next State Convention.

The State Committee may elect from among its members an Executive Committee, which shall be responsible to the State Committee.

Special State Conventions may be called either by a majority vote of the State Committee, or upon written request of the Branches representing one-third of the membership of the state, with the approval of the National Committee.

Section 3. District Organizations may be established by the National Committee, covering two or more states. In such cases, the State Committee shall be under the jurisdiction of the District Committee, elected by and representing the Party Organizations of the states composing these Districts. The rules of convening District Conventions and the election of leading Committees shall be the same as those provided for the State Organization.

Section 4. State and District Organizations shall have the power to establish all necessary subdivisions such as County, City and Section Organizations and Committees.

Section 5. The State Organization shall have full autonomy and power within the framework of the program, policies, and Constitution of the National Organization.

ARTICLE VIII

National Organization

Section 1. The supreme authority in the Communist Party of the U. S. A. is the National Convention. Regular National Conventions shall be held every two years. Only National Conventions are authorized to make political and organizational decisions binding upon the entire Party and its membership, except as provided in Article VIII, Section 6.

Section 2. The National Convention shall be composed of delegates elected by the State and District Conventions. The delegates are elected on the basis of numerical strength of the State Organizations. The basis for representation shall be determined by the National Committee.

Section 3. For two months prior to the convention, discussion shall take place in all Party Organizations on the main resolutions and problems coming before the Convention. During this discussion all Party organizations have the right and duty to adopt resolutions and amendments to the Draft Resolutions of the National Committee for consideration at the Convention.

Section 4. The National Convention elects the National Committee, a National Chairman and General Secretary by majority vote. The National Committee shall be composed of regular and alternate members. The alternate members shall have voice but no vote.

Section 5. The size of the National Committee shall be decided upon by each National Convention of the Party. Members of the National Committee must have been active members of the Party for at least three years.

Section 6. The National Committee is the highest authority of the Party between National Conventions, and is responsible for enforcing the Constitution and securing the execution of the general policies adopted by the democratically elected delegates in the National Convention assembled. The National Committee represents the Party as a whole, and has the right to make decisions with full authority on any problem facing the Party between Conventions. The National Committee organizes and supervises its various departments and committees; conducts all the political and organizational work of the Party; appoints or removes the editors of its press, who work under its leadership and control; organizes and guides all undertakings of importance for the entire Party; distributes the Party forces and controls the central treasury. The National Committee, by majority vote of its members, may call special State or National Conventions. The National Committee shall submit a certified, audited financial report to each National Convention.

Section 7. The National Committee elects from among its members a Political Committee and such additional secretaries and such departments and committees as may be considered necessary for most efficient work. The Political Committee is charged with the responsibility of carrying out the decisions and the work of the National Committee between its full sessions. It is responsible for all its decisions to the National Committee. The size of the Political Committee shall be decided upon by majority vote of the National Committee.

Members of the Political Committee and editors of the central Party organs must have been active members of the Party for not less than five years.

The National Committee shall meet at least once in four months.

The National Committee may, when it deems it necessary, call Party Conferences. The National Committee shall decide the basis of attendance at such Conferences. Such conferences shall be consultative bodies auxiliary to the National Committee.

ARTICLE IX

Disciplinary Procedure

Section 1. Breaches of Party discipline by individual members, financial irregularities, as well as any conduct or action detrimental to the Party's prestige and influence among the working masses and harmful to the best interests of the Party, may be punished by censure, public censure, removal from responsible posts, and by expulsion from the Party. Breaches of discipline by Party committees may be punished by removal of the committee by the next higher Party Committee, which shall then conduct new elections.

Section 2. Charges against individual members may be made by any person—Party or non-Party—in writing, to the Branches of the Party or to any leading committee. The Party Branch shall have the right to decide on any disciplinary measure, including expulsion. Such action is subject to final approval by the State Committee.

Section 3. The State and National Committees have the right to hear and take disciplinary action against any individual member or organization under their jurisdiction.

Section 4. All parties concerned, shall have the fullest right to appear, to bring witnesses and to testify before the Party organization. The member punished shall have

the right to appeal any disciplinary decision to the higher committes up to the National Convention of the Party.

Section 5. Party members found to be strike-breakers, degenerates, habitual drunkards, betrayers of Party confidence, prococateurs, persons who practice or advocate terrorism, sabotage, espionage, and force and violence, or members whose actions are otherwise detrimental to the Party and the working class, shall be summarily dismissed from positions of responsibility, expelled from the Party and exposed before the general public.

ARTICLE X

Amending the Constitution

This Constitution may be amended as follows: (a) by decision of a majority of the voting delegates present at the National Convention; or (b) by the National Committee for the purpose of complying with any law of any state or of the United States or whenever any provisions of this Constitution and By-Laws conflict with any such law. Such amendments made by the National Committee shall be published in the Party Press or Discussion Bulletins of the National Committee and shall remain in full force and effect until acted upon by the National Convention.

ARTICLE XI

By-Laws

Section 1. By-Laws may be adopted, based on this Constitution for the purpose of establishing uniform rules and procedure for the proper functioning of the Party organizations. By-Laws may be adopted or changed by majority vote of the National Convention, or between Conventions by majority vote of the National Committee.

Section 2. State By-Laws not in conflict with the National Constitution and By-Laws may be adopted or changed by majority vote of the State Convention or, between Conventions, by majority vote of the State Committee.

ARTICLE XII

Charters

The National Committee shall issue Charters to State or District Organizations and, at the request of the respective State Organizations, to County and City Organizations, defining the territory over which they have jurisdiction and authority.

JOSEPH R. BRODSKY, Esq.,
Attorney for Intervenor,
Communist Party of the U. S. A.,
100 Fifth Avenue,
New York, New York.

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

In the Matter of HARRY RENTON BRIDGES on Habeas Corpus

Communist Party of the United States of America, by William Z. Foster, its National Chairman and Earl Browder, its General Secretary,

Intervenor.

PROPOSED PLEADING UNDER RULE 24

The Communist Party of the United States of America, the intervenor herein, by Joseph R. Brodsky, Esq., its attorney, alleges:

FIRST: The Communist Party of the United States of America, hereinafter referred to as Communist Party, is a political party, a voluntary unincorporated association of citizens of the United States.

SECOND: William Z. Foster has been the National Chairman of the Communist Party since 1929, and Earl Browder has been its General Secretary since 1929.

THIRD: The aforesaid William Z. Foster and Earl Browder are fully familiar with the Constitution and By-Laws of the Communist Party, its organization, the proceedings of its several national conventions, the programs and platforms promulgated therein, the principles and activities of the said Communist Party from its inception to date, and are further familiar with the classic economic and political writings in the field of scientific socialism.

FOURTH: Upon information and belief, on May 28, 1942, Hon. Francis Biddle, Attorney-General of the United States, in a deportation proceeding entitled In re Harry Renton Bridges, found that the Communist Party of the U. S. A., from the time of its inception in 1919 to the present time, is an organization which advocates the overthrow by force and violence of the Government of the United States.

FIFTH: The findings were made by the Attorney-General without a trial or hearing, and without an opportunity being given the intervenor to present evidence, oral and documentary in its behalf.

SIXTH: The findings were made by the Attorney-General without notice to the intervenor.

SEVENTH: The findings made by the Attorney-General are unsupported by any evidence.

EIGHTH: The Attorney-General was without jurisdiction to make the findings.

NINTH: The findings made by the Attorney-General were arbitrary, capricious, and an abuse of administrative discretion, contrary to law, and the result of bias, prejudice and prejudgment.

TENTH: The findings made by the Attorney-General are unfounded and baseless in fact.

ELEVENTH: Upon information and belief, the Attorney-General on the said May 28, 1942, made an order of deportation against the said Harry Renton Bridges.

TWELFTH: Thereafter the said Harry Renton Bridges obtained from this Court an order directing the said Attorney-General and others to show cause why a writ of habeas corpus should not issue, and the said proceeding is now pending in this Court.

THIRTEENTH: That thereafter the application of the Communist Party to intervene in the aforesaid main proceeding was granted and the intervenor made a party to the main proceeding.

FOURTEENTH: The Communist Party does not and never has, from the time of its inception in 1919, to the present time, advocated the overthrow by force and violence of the Government of the United States.

FIFTEENTH: The findings made by the Attorney-General concerning the objectives of the Communist Party deprived the intervenor of its constitutional rights of freedom of speech, freedom to assemble and to petition the government for a redress of grievances, in violation of the First and Fifth Amendments to the Constitution of the United States.

SIXTEENTH: The aforesaid findings made by the Attorney-General denies to the intervenor the equal protection of the laws, in violation of the Fifth Amendment to the Constitution of the United States.

SEVENTEENTH: The aforesaid findings were made by the Attorney-General in violation of the Fifth Amendment to the Constitution of the United States in that it deprived the intervenor of its liberty and property without due process of law.

EIGHTEENTH: As a result of the findings and order made by the Attorney-General concerning the objectives of the Communist Party, the intervenor has suffered and continues to suffer injury and damage, and is threatened with future injury and damage to its liberty and property as guaranteed by the Constitution of the United States.

NINETEENTH: As a result of the findings and order made by the Attorney-General, damage is threatened to the reputation of the intervenor and its members and to the esteem in which they are held by large numbers of the American people.

TWENTIETH: The legal and constitutional rights of the intervenor to disseminate ideas and principles and to promulgate platforms and programs has been violated by the aforesaid findings and order of the Attorney-General, and its ability to nominate and elect candidates of its own choice and to present its views to the electorate, has been obstructed.

TWENTY-FIRST: The findings and order made by the Attorney-General, attacking an American political party, are injurious to national unity and national morale, both essential to winning the war.

TWENTY-SECOND: The intervenor has no adequate or other remedy, in any forum, at law or in equity, to restrain the continuing and threatened damages to its liberty and property.

WHEREFORE, the intervenor respectfully requests that an order be made remanding the deportation proceeding to the Immigration and Naturalization Service of the Department of Justice with directions to the said Department to give the intervenor a full and fair opportunity to be heard concerning the objectives of the Communist Party, including the right of confrontation and cross-examination

and the right of the intervenor to present evidence, oral and documentary, in its own behalf, and such other and further relief as the Court may direct.

JOSEPH R. BRODSKY, Esq.,
Attorney for Intervenor,
Communist Party of the U. S. A.,
100 Fifth Avenue,
New York, New York.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Saturday, February 26, 1944.

Before: Wilbur, Garrecht, Mathews and Healy, Circuit Judges.

[Title of Cause.]

A Notice of Motion and Motion for Order granting leave to intervene, to be presented on February 28, 1944, has been filed by, or on behalf of, the Communist Party of the U. S. A., together with brief in support of the motion to intervene.

The petition is denied and the propopsed motion is stricken from the calendar.

(Stephens, C.J., absent, not participating.)

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, June 26, 1944.

Before: Wilbur, Garrecht, Mathews, Stephens and Healy, Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINIONS AND FILING AND RECORDING OF DECREE

By direction of the Court, Ordered That the typewritten opinion, concurring opinion and dissenting

opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the majority opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Upon appeal from the District Court of the United States for the Northern District of California, Northern Division

OPINION

Before: Wilbur, Garrecht, Mathews, Stephens and Healy, Circuit Judges.

Wilbur, Circuit Judge:

The appellant, in custody of the respondent under a warrant for deportation, sought release by habeas corpus in the District Court for the Northern District of California. That court issued an order to show cause and, upon the showing made by the return and traverse, denied the petition and remanded the petitioner to the custody of the respondent. From that order the petitioner appeals to this court. The appellant attached to his petition for a writ a transcript of the entire proceedings before the Inspector who ordered deportation, the record of petitioner's appeal before the Appeal Board set up by the Attorney General, which recommended against deportation, and the final order of the Attorney General upon a review of the Appeal Board's decision ordering the deportation of the petitioner.

While the power of the District Court and of this court in such an application is well settled, in view of the wide range of the argument it is well to state again the limits of the court's authority in the premises.

The statute providing for deportation of undesirable aliens by the Attorney General provides that:

"In every case where any person is ordered deported from the United States under the provisions of this chapter, or of any law or treaty, the decision of the Attorney General shall be final." 8 U.S.C.A. § 155 (a).

Thus the court has no power derived from Congress to review or to inquire into the truth of the charge against the alien, nor into the manner in which the decision has been reached by the Attorney General. The right of the court to consider the validity of the order of deportation at all is derived directly from the Fifth Amendment to the Constitution of the United States, which prohibits a deprivation of liberty or property without due process of law.

The Supreme Court, in United States v. Ju Toy, 198 U. S. 253, 255, stated the rule controlling the court in such a case as follows:

"Where the law has confided to a special tribunal authority to hear and determine matters arising in the course of its duties, a decision by it within the scope of its authority as to questions of fact is conclusive against collateral attack. Where the jurisdiction depends upon a question of fact which is

the very gist of the controversy, the determination of that, is generally final. [citing cases]

"Where the decision of questions of fact is committed by Congress to the head of a Department, his decision thereon is conclusive; * * *".

This last statement is subject only to a court review upon the question of due process under the Fifth Amendment to the Constitution.

In Zakonaite v. Wolf, 226 U.S. 272, 275, it is said, (Mr. Justice Pitney writing the opinion):

"It is entirely settled that the authority of Congress to prohibit aliens from coming within the United States and to regulate their coming includes authority to impose conditions upon the performance of which the continued liberty of the alien to reside within the bounds of this country may be made to depend; that a proceeding to enforce such regulations is not a criminal prosecution within the meaning of the Fifth and Sixth Amendments; that such an injury may be properly devolved upon an executive department or subordinate officials thereof and that the findings of fact reached by such officials, after a fair though summary hearing, may constitutionally be made conclusive, as they are made by the provisions of the act in question."

In Tisi v. Tod, 264 U.S. 131, 133, it is said, (Mr. Justice Brandeis writing the opinion):

"We do not discuss the evidence; because the correctness of the judgment of the lower court is

not to be determined by enquiring whether the conclusion drawn by the Secretary of Labor from the evidence was correct or by deciding whether the evidence was such that, if introduced in a court of law, it would be held legally sufficient to prove the fact found.

"The denial of a fair hearing is not established by proving merely that the decision was wrong. Chin Yow v. United States, 208 U.S. 8, 13. This is equally true whether the error consists in deciding wrongly that evidence introduced constituted legal evidence of the fact or in drawing a wrong inference from the evidence. The error of an administrative tribunal may, of course, be so flagrant as to convince a court that the hearing had was not a fair one. Compare United States ex rel. Bilokumsky v. Tod,[1] 263 U.S. 149; Kwock[2] Jan Fat v. White, 253 U.S. 454; Zakonaite v. Wolf, 226 U.S.

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[1] In the cited case [opinion of Justice Brandeis] the alleged alien was being examined in a deportation proceeding and statements made by him while confined by state authorities were introduced in evidence. In a subsequent habeas corpus proceeding it was claimed that this was not legal evidence. The Supreme Court rejected the claim.

[2] In the cited habeas corpus proceeding [opinion by Judge Clarke], had after the subject of the habeas corpus petitions had been denied entry to this country by immigration authorities, it was shown that the transcript sent the Commissioner of Immigration omitted evidence that the subject was confronted by three persons who recognized him as the person he claimed to be. The Supreme Court held the order denying entry void as the subject had not been accorded "due process."

272; Tang Tun v. Edsell, 223 U.S. 673. * * * Under these circumstances mere error, even if it consists in finding an essential fact without adequate supporting evidence, is not a denial of due process of law."

In U.S. ex rel. Vajtauer v. Commissioner of Immigration, 273 U.S. 100, 112, (Mr. Justice Stone, now Chief Justice, writing the opinion) it is said:

"But we find it unnecessary to consider this question, [a question of burden of proof] as we think that the record taken as a whole and without the aid of any statutory presumption prevents some evidence supporting the deportation order."

We have consistently followed the decisions of the Supreme Court in this circuit upon this subject. In Whitty v. Weedin, 68 F.2d., 127, in considering an appeal from a decision of the trial court denying release by habeas corpus where the defendant was held under a deportation warrant, it is said:

"The point to be determined by us is whether the appellant had a fair hearing, and, if it appears from the record that he had, we are not at liberty to disturb the decison of the lower court. The truth of the facts is for the determination of the immigration tribunals, and where its procedure and decision are not arbitrary or unreasonable, and the alien has had a fair hearing, the result must be accepted."

This decision was followed and quoted in a similar case: Monji Uyemura v. Carr, 99 F.2d., 729. See also, our decision in Chin Share Nging v.

Nagle, 27 F.2d., 848; Mui Sam Hun v. U.S., 78 F.2d., 612.

The Supreme Court applied the rule in the late case of Costanzo v. Tillinghast, 287 U.S. 341, 342, wherein it is said:

"The Circuit Court of Appeals properly negatived the asserted absence of any evidence to support the action of the Secretary of Labor, and therefore refused, as we do, to review that office's findings." [citing cases]

Under the Fifth Amendment, as these authorities clearly show, deprivation of liberty in the execution of the deportation statute without due process of law is not countenanced and victims of such practice may come to the courts for relief by filing petitions for the issuance of the writ of habeas corpus. The courts can act in no other manner.

The courts have uniformly held that Congress cannot authorize a deprivation of liberty without due process of law as provided in the Constitution by the device of making the fact findings of an administrative board conclusive on the courts. That is to say, findings made without supporting evidence or without a hearing before the administrative body or officer are held by the courts to be void. Hence, on this purely collateral proceeding in habeas corpus, the validity of the order of the Attorney General for detention for deportation may be questioned but only to the extent necessary to determine whether there has been a denial of due process by the Attorney General. The parties recognize the

rule, but their argument of facts in some instance extends far beyond our power of examination. In effect they ask us to do what is condemned in Federal Trade Commission v. Algona Lumber Co., 291 U.S. 67, "pay lip service" to the statute.

The petitioner claims that the Attorney General applied an erroneous rule as to the Government's burden of proof and argues that the Government should establish its case beyond a reasonable doubt and that we are to judge whether or not this burden has been sustained. This whole contention is erroneous as the authorities hereinbefore cited indisputably show. The case of Schneiderman v. U.S., 320 U.S. 118, cited by appellant does not support this view and that decision has no application here. In that case the Supreme Court was reviewing a decision by a District Court and a Circuit Court of Appeals in equity revoking an order or decree admitting Schneiderman to citizenship. The rule there stated is for the guidance of federal courts exercising equity jurisdiction. The rule there applied by the courts is not applicable to a hearing on habeas corpus to determine whether or not the petitioner has had a fair hearing where the rule is that findings of the administrative body are conclusive if supported by evidence.

Congress, of course, could have given the courts jurisdiction over the subject of ordering aliens from the country as it gave the courts jurisdiction over the subject of naturalization of aliens and of the cancellation of naturalization decrees, but it did not do so. Instead, it set up elaborate official machinery

for the handling of this subject, which formerly was under the operation of other executive departments of the Government but which is now operated by the Department of Justice, of which the Attorney General is the administrative head. Our decision upon this appeal must be against the appellant if we discover in the record any evidence supporting the finding of the Attorney General. Thus his decision as to the weight and effect of the evidence is conclusive.

Congress has provided for the deportation of aliens belonging to or affiliated with certain subversive organizations described in the statute (8 U.S.C.A. § 137), from which we quote as follows:

"Any alien who, at any time, shall be or shall have been a member of any one of the following classes shall be excluded from admission into the United States:

"* * * (c) * * * Aliens who * * * are members of or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States * * *.

* * *

"(e) * * * Aliens who are members of or affiliated with any organization, association, society, or group, that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue or display, any written or printed matter of the character described in paragraph (d) [advising, advo-

cating, or teaching the overthrow by force or violence of the Government of the United States].

"(f) Definition of advising, advocacy, teaching, or affiliation.—For the purpose of this section: (1) the giving, loaning, or promising of money or anything of value to be used for the advising, advocacy, or teaching of any doctrine above enumerated shall constitute the advising, advocacy, or teaching of such doctrine; and (2) the giving, loaning, or promising of money or anything of value to any organization, association, society, or group of the character above described shall constitute affiliation therewith; but nothing in this paragraph shall be taken as an exclusive definition of advising, advocacy, teaching, or affiliation.

"(g) Deportation.—Any alien who was at the time of entering the United States, or has been at any time thereafter, a member of any one of the classes of aliens enumerated in this section, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in sections 10, 102, 105, 108, 109, 113, 115, 116, 132, 136, 138, 139, 142-156, 158-166, 168, 169, 171, 173, 175, 177, and 178 of this title. The provisions of this section shall be applicable to the classes of aliens mentioned therein, irrespective of the time of their entry into the United States."

The Attorney General, acting under § 137 (g), supra, issued a warrant for appellant's arrest on February 14, 1941. Hearing was had before the Inspector, beginning March 31, 1941 and ending June 12, 1941, occupying substantially all of forty-

two trial days. Appellant was there represented by three attorneys of his own choice and was accorded full opportunity to subpoena witnesses, introduce evidence, and cross-examine witnesses. Appellant testified extensively in his own behalf and, in addition, presented testimony of twnty-nine other witnesses and numerous exhibits. A shorthand reporter took down the entire proceeding; the transcript of his notes occupies 6972 pages of the printed record before us.

The Inspector decided in favor of the Government and appellant appealed to the Appeal Board which received further briefs and heard oral argument, and reversed the decision of the Inspector. Thereafter the Attorney General, upon the record, reviewed the matter and made the following findings of fact and conclusions of law:

"* * * I make the following Findings of Fact and Conclusions of Law, proposed by Judge Sears, to wit:

"Findings of Fact

"1. That Harry Renton Bridges is an alien, to wit, a native and citizen of Australia;

"2. That said alien entered the United States at the port of San Francisco, California, April 12, 1920, as a member of the crew of the barkentine Ysabel;

"3. That the Communist Party of the U.S.A., from the time of its inception in 1919 to the present time, is an organization that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States;

"4. That the Communist Party of the U.S.A., from the time of its inception to the present time, is an organiaztion that writes, circulates, distributes, prints, publishes, and displays printed matter advising, advocating; or teaching the overthrow by force and violence of the Government of the United States;

"5. That the Communist Party of the U.S.A., from the time of its inception to the present time, is an organization that causes to be written, circulated, distributed, printed, published, and displayed printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;

"6. That the Communist Party of the U.S.A., from the time of its inception to the present time, is an organization that has in its possession for the purpose of circulation, distribution, publication, issue, and display, printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;

"7. That the Marine Workers' Industrial Union was a part of the Communist Party, dominated and controlled by it;

"8. That the Marine Workers' Industrial Union was an organization that believed in, advised, advocated, and taught the overthrow by force and violence of the Government of the United States;

"9. That after entering the United States the

alien has been a member of the Communist Party:

"10. That after entering the United States the alien has been affiliated with the Communist Party;

"11. That after entering the United States the alien has been affiliated with the Marine Workers' Industrial Union.

"Conclusions of Law.

"That under the Act of October 16, 1918, as amended by the Acts of June 5, 1920, and June 28, 1940, the alien Harry Renton Bridges, is subject to deportation in that:

"1. After entering the United States he has been a member of an organization, association, society, or group that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States;

"2. That after entering the United States the alien has been affiliated with an organization, association, society, or group that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States;

"3. That after entering the United States the alien has been a member of an organization, association, society, or group that writes, circulates, distributes, publishes, and displays printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;

"4. That after entering the United States the alien has been affiliated with an organization, association, society, or group that writes, circulates,

distributes, publishes, and displays printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States;

"5. That after entering the United States the alien has been a member of an organization, association, society, or group that caused to be written, circulated, distributed, published, printed and displayed, printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States.

/s/ FRANCIS RIDDLE,

"May 28, 1942. Attorney General."

As it is admitted that petitioner is an alien, a citizen of Australia, the only question before us is as to his membership in on affiliation with proscribed organization. As to that, the question, and the only question which we are authorized to decide, is not whether the petitioner is a member of the Marine Workers' Industrial Union or the Communist Party, or is affiliated with either, or whether such organizations are subversive organizations, but whether or not there was evidence in the hearing before the Inspector, and therefore before the Attorney General, from which inferences could reasonably be drawn in support of the facts found.

Harry Lundeberg, president of the Maritime Federation of the Pacific, testified that the appellant had stated to him in the summer of 1935 that he was then a member of the Communist Party. This evidence was competent as an admission of the appellant. The question of the credibilty of this

witness, and the weight of the suporting and the conflicting evidence, finally lie wholly within the conclusive fact finding power of the Attorney General and are beyond our power of review. For the same reason, if there is evidence to support the finding of affiliation with the Marine Workers' Industrial Union, or the findings that these organizations, or either of them, were subversive, we may not weigh it against the contrary evidence. As to the subversive character of the Communist Party of the United States, there is evidence that in July 1929 "The Communist", a magazine published and circulated by the Communist Party, contained the following statement concerning the purpose of the Communist Party in the United States which clearly shows its purpose to change our government by force and violence:

"When Communists urge strikes and crippling of industry in time of war we are accused of trying to bring about the defeat of 'our own' government. To that charge we plead guilty. That is precisely our aim. A government engaged in warfare is weaker than at other times in spite of the fact that its savage repressions make it appear strong to the superficial observer. At such a moment an organized drive to stop the production of war supplies, to cripple the transportation system may result in creating such difficulties that the imperialist forces may be defeated.

"But it is not sufficient in our drive against imperialist war merely to concentrate upon the war industries. We must be able to reach the masses in

the armed forces of the nation with revolutionary agitation and propaganda calculated to cause defections and mutiny in the ranks.

"We do not indulge in the social, democratic twaddle about disarmament. We will not tell the soldiers in the army to throw away their guns and run home. We tell them to hold their guns in their hands and use them against their own capitalist oppressors. When faced with an imperialist war as an accomplished fact we must be able to popularize definite revolutionary slogans among the armed forces. In case of a war between imperialist nations we raise the slogan of fraternization with the soldiers of the opposing army, refusal to obey commands of officers, mutinies, and other forms of disruptive work. In case of a war against the Soviet Union our main slogan will be different. We will then urge the soldiers in the imperialist armies to desert the army and with their guns and as much ammunition as they can get, go over to the side of the Red Army against the imperialistic forces.

"While the capitalists prepare for another imperialist war, we prepare to utilize the difficulties for capitalism arising out of such a war in order to initate the next stage of the world revolution.

"We realize that such a conflict requires careful preparation under the leadership of a determined Bolshevik party. Turning an imperialist war between nations into a civil war against capitalism is not a simple matter, it is not a game for dilettantes to play. It requires the most highly developed revo-

lutionary strategy and an ability to estimate the relative forces involved in the struggle as well as the precise moment for the launching of the insurrection.

"When a revolutionary situation is developing, as a result of war or from any other cause, the party of the proletariat must lead a direct attack against the capitalist state. The slogan put forth must be of such a nature as to guide the movement in its development, which will take the form at first of mass strikes and armed demonstrations. In that stage there arises the question of arming of the working class and disarming the capitalist class. Finally the highest form of struggle is reached wherein it culminates in the general strike and a merging of large sections of the military forces and the workers for armed insurrection against the capitalist state power."

There is a vast volume of evidence in the record upon this subject which we have painstakingly examined but which we do not discuss for the reason that when we have pointed out this extract from the Communist magazine, we need go no further since it unquestionably constitutes evidence in support of the finding that the Communist Party advocates rebellion. The record thus shows evidence, firstly, that the appellant had been a member of the Communist Party since he entered this country and, secondly, that the Communist Party believes in, advocates and teaches the overthrow by force and violence of the Government of the United States. Congress has authorized the deportation, upon warrant of the Attorney General, of aliens

who belong or have belonged to such an organization. (8 U.S.C.A. § 137, supra)

Prior deportation proceedings were instituted against the appellant in 1938 under 8 U.S.C.A. § 137 as it then stood, providing for deportation of members of subversive organizations. During the progress of the proceedings the Supreme Court interpreted the statute to apply only to those who were members of such organizations at the time deportation proceedings were instituted. (Kessler v. Strecker, 307 U.S. 22). The Inspector who was in charge of the hearing concluded that the appellant had terminated his connection, if any, with the Communist Party prior to the institution of the proceedings and therefore dismissed the proceedings for the warrant of deportation. Thereafter, Congress, on June 28, 1940, modified the act to apply to any alien who was "at the time of entering the United States, or has been at any time thereafter, a member" of an excluded class of aliens, including past or present members or affiliates of subversive organizations. (54 Stat. 673; 8 U.S.C.A. § 137 (g)). Thereafter the proceedings now under attack were inaugurated and were heard before a different Inspector. Such later hearing resulted in the order of deportation now under attack.

We recite this history as an aid to the understanding of a number of legal points raised by appellant which we shall now proceed to treat. It is claimed that the decision by the Inspector in the first proceeding is res judicata on the question now before us. The question before the Inspector in the

earlier case relates only to whether or not the appellant was at the time of the institution of the proceedings a member of or was an affiliate of a proscribed organization and did not cover the question in the present case which is as to whether or not the appellant has been at any time since his arrival in this country a member or affiliate of such an organization.

It is also claimed that the appellant has been subject to double jeopardy in violation of the Constitution of the United States. The principle of double jeopardy applies only to criminal procedings. This is not a criminal proceeding.

It is claimed that the act of 1940 is an ex post factor law in that it permits deportation for conduct prior to the enactment of the amended law. The constitutional prohibition against ex post facto laws applied only to criminal proceedings. A proceeding for deportation is not a criminal proceeding and is not intended nor designed to punish crime.

Appellant argues that the evidence of Lundeberg was so unworthy of credence that it should be held as a matter of law to be of no weight whatever. It is not for us to say whether or not the Attorney General was justified in accepting it as sufficient proof of the facts stated by Lundeberg, namely, that Bridges had stated to him that he was a member of the Communist Party. To assert that the Attorney General was bound to disbelieve the evidence of this witness would be to invade his province and to assume the obligation of determining the facts. Congress, acting within its legislative power, has effectively prohibited the determination of the facts by

any court or any body other than the Attorney General. (8 U.S.C.A. § 155 (a),.supra). We do not mean to say that we would be bound to consider any testimony received in the case as beyond our question. Testimony, of course, could be so inherently impossible or improbable of belief that its receipt or its acceptance as proof would be an abuse of the administrative discretion but we have no such instance here. Because we cannot weigh the credence to be given the testimony of Lundeberg, we do not recite in detail the evidence which is claimed to discredit his testimony. Such evidence is to the effect that Lundeberg was hostile to the appellant, and that he had made prior statements that he did not know whether or not the appellant was a member of the Communist Party.

It was claimed by the immigration authorities that one O'Neil had made statements to them [one a shorthand reporter who claims to have taken the statements in shorthand at the time] that he had seen the appellant pasting stamps in his Party Book, such stamps indicating that the appellant was paying dues to the Communist Party. O'Neil was called as a witness by the immigration authorities and denied that he knew anything about appellant's relation to the Communist Party, although he claims to have told only the truth to the authorities. His contradictory statements made to the authorities were then admitted in evidence, including the transcription of the reporter's shorthand notes. Appellant claims that the admission and consideration of

these asserted statements by O'Neil rendered the deportation proceeding unfair and void. Neither the Inspector nor the Attorney General is bound by the common law rules of evidence, and it is not true that the reception of incompetent or hearsay evidence is a ground for treating the decision of the Inspector and Attorney General as void. There being evidence to support the finding of the Inspector and Attorney General that the appellant was a member of the Communist Party the acceptance of additional evidence of less probative value by the Inspector and the Attorney General cannot avail the appellant in this collateral proceeding. The applicable rule was stated in Bilokumsky v. Tod, 263 U.S. 149, 157, as follows:[3]

"Morever, a hearing granted does not cease to be fair, merely because rules of evidence and of procedure applicable in judicial proceedings have not been strictly followed by the executive; or because some evidence has been improperly rejected or received. Tang Tun v. Edsell, 223 U.S. 673, 681."

We may add with propriety that it is a heavy burden to decide which person told the truth in the direct conflict occurring in the testimony of Lundeberg and Bridges and in the asserted statement of O'Neil and the testimony of Bridges. The statement by Lundeberg that Bridges claimed to be a Communist falls into a class of evidence that is

[3]It must not be assumed that the Lundeberg and O'Neil testimony is the only relevant testimony in the case. We discuss this testimony because of its importance and because of the attack made upon it by appellant.

easily given and hard to refute. In view of the authorities cited the danger of mistake which is undeniably present is for the administrative head and for him alone to take. Under the law that burden fell finally and squarely upon the Attorney General. The district judge, whose judgment we are reviewing, and this court would be exercising power we do not legally possess if we should essay to assume that burden. The courts do not have unlimited sanction to attempt the righting of every governmental act which the judges regard as wrong; their first duty is to act only within their limited power.

During the progress of the deportation proceedings three opinions were written; one by the presiding inspector, Judge Sears, formerly of the Court of Appeals of the State of New York, and another by the Board of Immigration Appeals; and a third by the Attorney General. Each of these sets forth in great detail the reasons and bases for the conclusions reached. The Inspector's findings were against the appellant; those of the Board were in his favor; and those of the Attorney General sustained the Inspector. A considerable part of the briefs deals with the reasoning and pronouncements of these various opinions. We are not concerned with the mental processes by which these conclusions were reached, although it is worthy of mention that the Attorney General stresses the fact that Inspector Sears, with whose determination he agrees, had the witnesses before him and was for that rea-

son better able to adjudge of their credibility than one could be who has merely studied the record.

The briefs before us discuss the question whether or not the appellant was affiliated with the Communist Party or with the Marine Workers' Industrial Union. As the warrant for deportation is supported by the findings of the Attorney General that the appellant was a member of the Communist Party, it is not necessary for us to determine whether there is evidence to support the finding of the Attorney General that appellant was affiliated with that organization or with the Marine Workers' Industrial Union, or whether or not the latter named organization was a part of the Communist Party. However, lest we be misunderstood, we state that we have carefully reviewed all of the evidence regarding the relation of the Marine Workers' Industrial Union with the Communist Party and appellant's relation to these two organizations. This review has convinced us that there is evidence to support the findings of the Attorney General that the Marine Workers' Industrial Union was a part of the Communist Party and that appellant was affiliated with it during the period of the longshoremen's strike. It may be stated arguendo that appellant, in his management of that strike, was attacking most vicious and inhumane practices toward longshoremen and that he was justified in accepting help from any quarter. The very bad conditions referred to were amply established by the evidence but this circumstance does not lessen the fact that the evidence adduced before the Inspector supports

the inference and the finding that appellant was in affiliation with the organization known as the Marine Workers' Industrial Union.

Likewise, we hold that the evidence supports the Attorney General's findings 4, 5 and 6.

A witness named Maurice J. Cannalonga, who testified in favor of the immigration authorities, and subsequently signed statements repudiating his testimony, was again brought before the Inspector by the immigration authorities after demand by the appellant, and again testified, as he had in the first instance, repudiating his conflicting statements on the ground that he was confused for the reason "he had been hitting the booze heavy then." The testimony of this witness was disregarded, as appears from the statement of the Inspector and the Board of Appeals. It is claimed, however, that when he was placed upon the stand the second time the immigration authorities were cognizant of the fact that he was intending to commit perjury on the stand. It is claimed also that the testimony of this witness was fabricated. In support of the suggestion that this invalidates the whole proceeding, the appellant cites the case of Mooney v. Holohan, 294 U.S. 103. That case holds that where the state, through its administrative officers, conspires to use the courts of the state for the purpose of convicting a man known to be innocent, by fabricated testimony, such conduct by the state constitutes a denial by the state of due process.

It is not shown how the government officials could know that a repetition of his testimony theretofore

given was perjury even though it were known that after being interviewed by appellant's counsel he had given a statement contrary to the testimony first made under oath in the deportation proceeding. (See, Chiggeri v. Nagle, 19 F.2d., 875)

This aspersion upon the integrity of the Government's attorneys is wholly gratuitous and without foundation in fact.

Order affirmed.

Stephens, Circuit Judge, concurring:

I concur in the opinion prepared by Judge Wilbur and in the decision reached therein. To decide otherwise, as it seems to me, would be judicial usurpation of power to meet an unusual situation. One of the maxims of the law is that hard cases make bad law. It cannot be denied that the evidence in this case falls far short of the "clear, unequivocal and convincing" rule the Supreme Court has announced for the review of judgments in denaturalization proceedings. Baumgartner v. United States, ... US .... (June 12, 1944); Schneiderman v. United States, 320 US 118.

This proceeding, however, does not originate in a court action as those cases do but from an administrative decision. Not only has the Supreme Court never announced the "clear, unequivocal and convincing" rule for such a proceeding, it has never announced that any court in reviewing such a decision can decide whether or not the mere burden of proof has been or has not been sustained. When some evidence supporting the decision has been

found, the reviewing court's decision is definitely fixed. See the quotations in the main opinion from Tisi v. Tod, 264 US 131, 133, written by Mr. Justice Brandeis, and from United States ex rel. Vajtauer v. Commissioner of Immigration, 273 US 100, 112, written by Mr. Justice Stone.

In no case have I given the evidence more careful attention than in this one. However, such attention has not left in my mind the pleasurable satisfaction that, barring a very slight possibility of error, the truth has been revealed. Such satisfaction is beside the point here. The simple question this court must answer is: Is there some evidence to sustain the charges? There is.

I am authorized to say that Judges Wilbur and Mathews are in agreement with these expressions.

Healy, Circuit Judge, Dissenting

It was not charged nor is there evidence that the alien has advocated the forcible overthrow of the government of the United States. Nor was there charge or proof that he entertained views inimical to constitutional government, or that he at any time possessed or distributed literature subversive of the constitution. The accusation is that he was a member of or was affiliated with an organization, namely, the Communist party, which did those things. This accusation the alien has countered with a flat and unequivocal denial. For those who cherish traditions of American justice it is permissible to believe that the alien should not be deprived of his freedom to remain here unless the truth of the accusation be fairly established. That it was

not so proven must be patent, I think, to any candid person who takes the trouble to examine the record.

I am aware that in a proceeding of this nature the court is powerless to review or weigh the evidence in the ordinary sense. It is not my purpose to do more than consider its adequacy in the light of the whole record. I desire particularly to point out what seems to me to be the fact, namely, that the crucial finding in the case was arrived at in reliance upon incompetent evidence—evidence, moreover, received and considered in violation of a regulation of the Department designed to insure fair hearings and to safeguard the rights of aliens. If this be true, I think it follows that the alien was not accorded due process.

Bridges is a native of Australia. He came to the United States as a sailor in the year 1920.[1] His entry was lawful and he had and has the legal right to remain unless he has transgressed some act of Congress authorizing his expulsion. Some years after his arrival he became a longshoreman in San Francisco where he was active in establishing the International Longshoremen's Association (affiliated with the American Federation of Labor) as opposed to company-controlled unions of longshore-

[1] In 1921 he filed first papers for naturalization. Application for final papers made in 1928 was denied on the ground that the 7-year period for filing had elapsed. He filed first papers again in 1928, but these were again permitted to lapse. He filed first papers for the third time in 1936 and this application was still pending at the time of the trial.

men then functioning on the waterfront.[2] The ILA, as is conceded, was a legitimate union organized to combat practices toward longshoremen which my associates in the majority appropriately characterize as "vicious and inhumane." In the maritime strike of 1934 the union strove effectively to remedy these substandard practices.[3] During the strike the alien was chairman of the joint strike committee of the participating unions. He became, so to speak, a storm-center of bitter industrial controversy, accumulating many enemies and earning the hostility of powerful interests.

For a period of several years following the strike certain volunteer organizations, notably the Portland police and a committee of the American Legion headed by one Knowles, embarked actively on a far-flung search for evidence upon which the alien might be deported. The Immigration Service,

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[2] Bridges was president of this union from 1934 to 1937, when it became affiliated with the CIO, changing its name to International Longshoremen and Warehousemen's Union. Bridges was then elected president of the Pacific Coast district for the CIO and apparently still occupies this post.

[3] The evils giving rise to the strike are described in detail by Presiding Inspector Sears who states that it was the company-controlled, or "Blue-Book Unions," which enabled the employers to perpetuate the practices described. "These company unions," said Inspector Sears, "were in existence on the waterfront until October, 1933, when they were forced out of existence by the newly revived and militant ILA Union, of which Bridges became an early member."

spurred on apparently by complaints of Knowles, itself made investigations and checked on information called to its attention by the private inquisitors. But in 1936 the Service reported its inability to discover grounds for deportation.

In 1938 a deportation warrant was issued on charges identical with those made in the later proceeding with which we are here directly concerned. Before the trial began the Supreme Court decided Kessler v. Strecker, 307 U. S. 22, whereupon the warrant was amended to charge that the alien "both was and is" a member of or affiliated with the proscribed organization. The hearing on the charges, conducted before Dean Landis as trial examiner, continued almost uninterruptedly over a period of eleven weeks, being finally closed in September 1939. In all forty-five days were occupied in the actual taking of testimony. The testimony covered 7,724 pages, exclusive of 274 exhibits. The examiner found that the evidence established neither the alien's membership in nor his affiliation with the Communist party. The report and proposed findings were accepted by the Department and the warrant of arrest was cancelled.

There followed the statutory amendment of June 28, 1949, designed to avoid the holding in Kessler v. Strecker, supra. From the legislative history of the amendment it is evident that its proponents had the Bridges case specifically in mind.[4] A second

[4] A private bill for the deportation of Bridges, "notwithstanding any other provision of law," ac-

warrant was issued in February 1941 and a second hearing had, this time before presiding inspector Sears. This hearing continued over a period of two and a half months, the testimony adduced totaling 7,546 typewritten pages exclusive of 359 exhibits, 297 of which were introduced by the government. Much of the evidence taken at the prior hearing was read into the record, and the two inquiries largely covered the same territory. The trial eventuated as described in the majority opinion, the inspector's findings of membership and affiliation being set aside by the Board of Immigration Appeals and thereafter reinstated by the Attorney General.

It is notable that the alien, in one fashion or another, had been under almost continuous investigation for a period of more than five years. Prior to and during the course of the second trial the Service had enlisted the powerful cooperation of the Federal Bureau of Investigation. The country had been scoured for witnesses, every circumstance of Bridges' active life had been subjected to scrutiny, and presumably no stone left unturned which might conceal evidence of the truth of the charges which the alien so flatly denied. The most significant feature of the inquiry, as it seems to me, is the paucity of the evidentiary product as contrasted with the magnitude of the effort expended in producing it.

The finding of Communist party membership

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tually passed the House. It was rejected in the Senate after a protest by Attorney General Jackson, now a member of the supreme bench. S. Rep. No. 2031; 76th Cong., 3rd Sess.

presents the crux of the case. This finding rests upon two items of evidence. One of these is the testimony of the witness Landeberg concerning his recollection of a remark said to have been made by the alien in a conversation occurring six years before. The other consists of an unsworn and later disavowed oral statement of a man named O'Neil.

Before looking at the testimony of these two men I turn briefly to circumstances said to establish the alien's "affiliation" with the Communist party as distinguished from membership therein. In the main there is no dispute concerning these circumstances. The bulk of them had long been known alike to the authorities and to the general public, and were freely admitted by the alien himself. Nearly all of them had been evaluated and discarded by inspector Landis and by the Department upon the first trial. They relate to the alien's willingness to accept help from Communist quarters during the course of the longshoremen's strike; to the fact that there were Communists among Bridges' associates; to the alien's public denunciation of "redbaiters" as no true friends of labor; to his participation, before and during the strike, in the editing of a mimeographed sheet called the Waterfront Worker in which was printed news relating to the strike and articles designed to inform readers of the economic ills from which the longshoremen suffered. It is not claimed that the contents of this partisan paper were suggestive of Communist doctrine; the significance of the cir-

cumstance is said to rest in the fact that the paper had been started by the Marine Workers Industrial Union (an allegedly Communist organization), shortly abandoned by that group, and thereafter taken over by Bridges and his associates and issued from the former address. There is the related circumstance, heavily stressed by the Service, that Bridges' union and the Marine Workers Industrial Union, both of which were participants in the maritime strike, rendered mutual assistance in the course of it. Hence the finding of affiliation with the MWIU.

The alien, who was nothing if not a forthright witness, made no effort to minimize or excuse the facts. He pointed merely to the reasons impelling his conduct. He would, he said, "probably do the same thing again." His concern was not with the opinions of men, but to win the strike. If a man was a good unionist he was for him, if a bad unionist he was against him. If it is permissible to compare small things with great, one may remark that the bonds which today unite our people with the Soviet Union afford a striking analogy to those which in 1934 linked Bridges with the MWIU. Surely no one would suggest that a liaison dictated by the necessities of a common struggle for survival make of our people or of our government "affiliates" of the Communist party.

On this aspect of the inquiry the problem is not one of conflicting inferences to be drawn from conceded facts. Involved, rather, is the question of the meaning of the term "affiliation" as employed in

the statute. The question is one of law. Dean Landis pertinently observed that "affiliation" means more than sympathy and implies a stronger bond than mere association. One must not here lose sight of the policy of the law. In condemning "affiliation" with a proscribed group it would seem that Congress had in mind a working arrangement of some sort designed, or at least having a substantial tendency, to further the subversive aims of the group. A temporary or occasional joinder of forces for the attainment of an end entirely legitimate in itself, as for example, the betterment of substandard conditions of workers in a given industry, can hardly be thought to fall within the legislative ban. I suppose that in every-day practice even Communists have their constructive moments.

For the most part the cases dealing with the term "affiliation" involve facts so much stronger than the present that they are of little aid to decision. Perhaps the fullest discussion of the term is found in Kettunen v. Reimer, 2 Cir., 79 F. 2d 315, 317. Said Judge Chase, who wrote the opinion: "In deciding this case, we shall not attempt to give a comprehensive definition of the word 'affiliation' as used in the statute. Very likely that is as impossible as it is now unnecessary. It is enough for present purposes to hold that it is not proved unless the alien is shown to have so conducted himself that he has brought about a status of mutual recognition that he may be relied on to cooperate with the Communist Party on a fairly permanent basis. He must be more than merely in sympathy with its

aims or even willing to aid it in a casual intermittent way. Affiliation includes an element of dependability upon which the organization can rely which, though not equivalent to membership duty, does rest upon a course of conduct that could not be abruptly ended without giving at least reasonable cause for the charge of a breach of good faith. So tested we cannot agree that there was evidence to establish that this relator was affiliated with the Communist Party. His application for membership would indicate his then sympathy with its aims, but his reconsideration and failure to join shows his unwillingness to let his sympathy control his action, and there is no proof which shows any mutual recognition that cooperation was to be expected from him."[5]

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[5] In United States ex rel. Yokinen v. Commissioner, 57 F. 2d 707, 708, Judge Augustus Hand said: "It is enough that the alien Yokinen, by pledging himself to perform certain tasks prescribed by the Communist Party in order to secure reinstatement, must be regarded as affiliated with it." And in an unreported opinion, Tolsky v. Wilson (S.D.N.Y.), June 22, 1920, Judge Learned Hand said: "As to affiliation the case is not so clear, and depends upon how one defines that word. I take it to mean a relation of cooperation between the members of two or more organizations. Perhaps it may also include an irregular connection of a single individual with the society, not amounting to membership. However this may be, it seems to me pretty clear that it involves a mutual recognition of permanent cooperation between the organization and the person affiliated and not a spasmodic or casual assistance. Mere sympathy with the aims of the society, even accompanied by efforts to further its aims, does not fall within that word."

The Attorney General was not at pains to explain his understanding of the statutory term. In arriving at his finding of affiliation he appears to have relied indiscriminately on every circumstance which might be thought to spell sympathy or to be indicative of an association however temporary or in pursuit of ends however legitimate. His finding on this issue is without substantial evidentiary support.

I turn now to the evidence of party membership. Lundeberg testified that in a conversation had in 1935 at Bridges' home the alien said "I am a Communist." This witness was the head of a rival union. His attitude toward the alien was admittedly one of implacable hostility. His story, under persistent leading questions, grew more specific with each repetition if it. The four participating members of the Board of Immigration Appeals unanimously rejected it as unworthy of credence. The Board called attention to the avowed enmity of the witness, to the enlargement of his story while on the stand under the prompting of government counsel, to his incurable evasiveness under cross-examination, to the man's prior inconsistent statements made under solemn circumstances and more than once repeated. On the other hand the presiding inspector and the Attorney General thought Lundeberg a credible witness. As a matter of course, the court, whatever its own view, is not at liberty to choose between the conflicting appraisals of credibility by the officials charged with the re-

sponsibility of determining the facts. I point to the disagreement as disclosing how closely the proof here approaches if it does not cross the borderline of inadequacy.

The remaining evidence on the point is that of O'Neil, a man whom the Board of Appeals, not without ample warrant, characterized as "a theatrical, sensation-loving braggart." O'Neil is reported as having said to representatives of the Service, in the course of their investigations, that in 1937 he entered Bridges' office in the middle of an afternoon and found the alien sitting at his desk openly posting stamps representative of Communist party dues. The statement to this effect, assuming it to have been made, was not given under oath, was not signed, nor does any effort appear to have been made to obtain the man's oath or signature. When called by the Service and sworn O'Neil denied having said the things attributed to him. Further, he categorically denied that the incident had ever occurred and declared that he had no information as to Bridges' membership in the Communist party. The alleged statement was thereupon offered and received in evidence over the alien's objection. It was accepted and relied upon by the presiding inspector and by the Attorney General as affording affirmative proof of party membership. The Board of Appeals thought the statement inadmissible for any purpose other than impeachment. That body was doubtful even of its admissibility for impeachment purposes, and I think properly so since the government was obviously not surprised and O'Neil had given no testi-

mony damaging to the government's case. There was no point in impeaching him.

The field of use of ex parte statements in deportation proceedings is carefully delimited by Departmental rules. Such statements, when their possible use as evidence is cotemplated, are required by the rules to be taken under oath or affirmation, "recorded" (i.e. reduced to writing), and signed by the relator.[6] These precautionary requirements are elementary and may be said to prescribe the minimum of fairness.[7]

The rules, adopted as they were under authority and direction of law, are part and parcel of the regulations "governing the arrest and deportation of aliens.[8] They were disregarded here. The At-

[6] Regulations §150.1 [c], [d]; §150.6 [i].

[7] The Board of Appeals, in commenting on the purpose of the rules, said: "Here a written statement at the Schofield interview would have guarded against mistake in hearing, memory or transition. As to both statements, the oath and signature of the maker would at least have shown O'Neil to be, on two occasions, willing to pin himself down, and to do so under oath, thus providing the safeguard of fear of perjury prosecution; and, contrariwise, had he been asked to swear and sign and refused, the fact of his unwillingness, on two occasions, so to pin himself down, would have been of no small weight in evaluating the truth of the statements made."

[8] Fed. Reg. January 4, 1941, p. 68. The revised regulations appear to have been the outgrowth of much study and experience. Consult report of the Committee on Administrative Procedure, Immigration and Naturalization Service, Dept. of Labor, May 1940.

torney General so concedes in his decision. He excused their violation on the specious plea that they "were not called to the attention of the presiding inspector." However, they were called to the Attorney General's attention. One is left to wonder on what ground that high official condoned his own disregard of them. Upon him rested the inescapable responsibility of accepting or rejecting the evidence, as of ordering the deportation. The rules were obligatory on him if on anybody. To toss them aside for reasons deemed expedient in a particular case amounts to the substitution of a government of men for a government of law. There are numerous and persuasive decisions to the effect that the disregard by officials of departmental rules on which the rights of aliens depend amounts to a denial of due process.[9] I have found no au-

[9] Consult particularly Sibray v. United States ex rel. Plichta, 3 Cir. 1922, 282 Fed. 795 (violation of Rule 5[b] relating to the reading to the alien of the evidence of which the warrant was based); United States ex rel. Chin Fook Wah v. Dunton, 288 Fed. 959, decision by Judge Augustus Hand (relating to Rule 3 providing that the alien might have a friend or relative present during the hearing); Mah Shee v. White, 9 Cir., 242 Fed. 868 (relating to Rule 5[c] governing the alien's right to forward new evidence to the Secretary along with the record); Ex parte Radivoeff, 278 Fed. 227 (violation of Rule 22 relating to examination by the alien of evidence on which warrant was issued). Consult, also, Whitfield v. Hanges, 8 Cir., 222 Fed. 745, opinion by Judge Sanborn.

thorities to the contrary.[10]

Apart from non-observance of the regulations, the situation is no better. Of course the mere reception of incompetent evidence does not invalidate a hearing; but error in reliance upon such evidence may, in appropriate circumstances, go to the substance of a fair trial.[11] The real inquiry is whether the practice was "such as might have led to a denial of justice."[12] In this instance the remaining showing of party membership was of so flimsy a character as to lead the Appeals Board to reject it entirely. The Attorney General's acceptance of the O'Neil hearsay as probative evidence might easily have served to tip the scale. I am satisfied it did so.

To be sure, the ordinary rules relating to the

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[10] Cf. Bilokumsky v. Tod, 263 U. S. 149, 155; Tisi v. Tod, 264 U. S. 131, 134. Seif v. Nagle, 14 F. 2d 416, cannot fairly be thought contra.

[11] The majority opinion quotes extensively from the opinion of Justice Brandeis in Tisi v. Tod, 264 U. S. 131. Omitted, however, from the quotation is the following significant passage which is the essence of the decision: "But here no hasty, arbitrary or unfair action on the part of any official, or any abuse of discretion is shown. There is no claim that the lack of legal evidence of knowledge was manifest; or that the finding was made in wilful disregard of the evidence to the contrary; or that settled rules of evidence were ignored. The procedure prescribed by the rules of the Department appears to have been followed in every respect; and the legality of that prescribed is not questioned."

[12] Cf. language of Justice Brandeis in Bilokumsky v. Tod, 263 U. S. 149, 157.

reception of evidence are not generally applied in administrative hearings. The reasons underlying this departure from judicial practice have often been stated.[13] Administrative proceedings are in the main informal, are frequently not conducted with the aid of counsel or heard by men trained in the law, and of necessity they are often of a summary nature. None of these reasons obtained in this instance. The hearing was conducted before a trained judge, and both the Service and the alien were represented by experienced counsel. There was ample time and opportunity to observe the precautions thought by the courts to be essential to a fair trial. Moreover, the case, unlike the mine run of administrative hearings, was one in which the liberty of a human being was at stake. Surely it presented an occasion where "the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended."[14]

As applied to the situation here presented, arguments predicated on the "protective weapon" of cross-examination are without validity. A witness

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[13] 1 Wigmore on Evidence (3rd ed. 1940) §4(a), (b); Landis, Crucial Issues in Administrative Law, 53 Harvard Law Review 1077 (1940); Davis, An Approach to Problems of Evidence in the Administrative Process, 55 Harvard Law Review 364 (1942).

[14] Interstate Commerce Commission v. Louisville & Nashville R. R. Co., 227 U. S. 88, 93.

who denies ever having made an alleged prior statement and who denies all knowledge of the facts purportedly then stated offers no target against which the weapon may be employed. The infirmity of the O'Neil hearsay cuts across all rules. No amount of philosophizing can serve to make a silk purse out of this obvious sow's ear. Rather than deport the alien on evidence which would be condemned and proscribed without hesitation by any American court it would seem a more forthright procedure to do what was proposed in the first place, deport him by legislative resolution "notwithstanding the provisions of any other law."

I think the judgment should be reversed with directions to grant the petition.

I am authorized to say that Judge Garrecht agrees with this opinion.

[Endorsed]: Opinion, Concurring Opinion and Dissenting Opinion. Filed Jun. 26, 1944. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10450

HARRY BRIDGES,

Appellant,

vs.

I. F. WIXON, etc.,

Appellee.

DECREE

Appeal from the District Court of the United States for the Northern District of California, Northern Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Northern District of California, Northern Division, and was duly submitted.

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the order of the said District Court in this cause be, and hereby is, affirmed.

[Endorsed]: Filed and Entered June 26, 1944. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Wednesday, September 27, 1944.

Before: Wilbur, Garrecht, Mathews, Stephens and Healy, Circuit Judges.

[Title of Cause.]

ORDER DENYING PETITION FOR REHEARING, etc.

Upon consideration thereof, and by direction of the Court, It Is Ordered that the petition of appellant, filed July 26, 1944, and within time allowed therefor by rule of Court, for a rehearing of above cause be, and hereby is denied.

By direction of Stephens, Circuit Judge, Ordered that his opinion on petition for rehearing be forthwith filed by the clerk.

[Title of Circuit Court of Appeals and Cause.]

OPINION OF STEPHENS, C. J.

Upon Petition for Rehearing.

Before: Wilbur, Garrecht, Mathews, Stephens and Healy, Circuit Judges.

Stephens Circuit Judge.

The petition for rehearing stresses the point that the majority and concurring opinions in this case state that there is "evidence" and that there is

"some evidence" which supports the order of deportation. The implication is that these terms were used as including a mere scintilla of evidence.

Federal courts do not regard a mere scintilla of evidence as effective for any purpose, and it is my understanding that in using the word "evidence" the idea of the mere scintilla was never considered.

Where there is evidence, more than a scintilla and not unbelievable upon its face, the administrative head must resolve the doubts as to its credibility. Upon this rule we have ordered enforced numerous orders for the exclusion and for the deportation of aliens without regard to our own views as to the fact finder's discretionary conclusions.

The advisability of liberalizing this rule is currently the subject of much discussion, but whatever the ultimate action may be upon such issue of policy by those having the power to change it, it is clear to me that this intermediary court must adhere to the rule as it presently exists. We cannot make fish of one administrative review and fowl of another. Therefore, I vote to deny the petition for rehearing.

[Endorsed]: Opinion of Stephens, C. J., on denial of Petition for Rehearing. Filed Sep. 27, 1944. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER STAYING MANDATE

On reading and filing the Motion and Petition to Stay Issuance of Mandate Pending Petition for Certiorari, and the supporting affidavit of Richard Gladstein attached thereto, and good cause appearing therefor

It Is Hereby Ordered that the mandate in the above cause shall be and hereby is ordered stayed for a period of three months from and after the 27th day of September, 1944.

Dated at San Francisco, California, this 30th day of September, 1944.

FRANCIS A. GARRECHT
Judge of the United States
Circuit Court of Appeals
for the Ninth Circuit.

[Endorsed]: Filed Sep. 30, 1944. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing Seventeen volumes, containing seven thousand eight hundred thirteen (7813) pages, numbered from and including 1 to and including 7813, to be a full, true and correct copy of the entire record, excluding certain original exhibits, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 24th day of October, 1944.

[Seal] PAUL P. O'BRIEN,
Clerk

[fol. 7815] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10,450

HARRY BRIDGES, Appellant,

vs.

I. F. WIXON, as District Director, Immigration and Naturalization Service, Department of Justice, Appellee

Before Wilbur, Garrecht, Mathews, Stephens and Healy, Circuit Judges

STEPHENS, Circuit Judge:

Paragraph 3, sentence 2, of the opinion of Stephens, Circuit Judge, on Petition for Rehearing of the above-entitled case is hereby amended to read as follows:

"Upon this rule we have determined appeals in habeas corpus proceedings and reviews from administrative orders without regard to our own views as to the fact finder's discretionary conclusions."

In paragraph 4, sentence 2, the word "review" is deleted and the word "order" is inserted.

Albert Lee Stephens, United States Circuit Judge.

(Endorsed:) Filed November 1, 1944. Paul P. O'Brien, Clerk.

A true copy. Attest: Nov. 2, 1944. Paul P. O'Brien, Clerk. (Seal.)

[fol. 7816] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 29, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.